Legislative Finance Committee
December 9, 10, 11, 12, 13, 2013
State Capitol Room 307
Santa Fe, NM 87501

Monday, December 9, 2013
The following members and designees were present on Monday, December 9, 2013: Chairman Luciano "Lucky" Varela; Vice Chairman John Arthur Smith; Representatives Henry "Kiki" Saavedra, Larry A. Larrañaga, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, and William "Bill" J. Gray; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Mary Kay Papen, Carroll H. Leavell, Steven Neville, and Pete Campos. Guest Legislators: Representatives Donald E. Bratton, Jimmie C. Hall, and Jim R. Trujillo. Senators William F. Burt, Bill B. O'Neill, Michael Padilla, and Clemente Sanchez.

FY14 and FY15 General Fund Revenue Projections. Tom Clifford, secretary, Department of Finance and Administration (DFA), briefed the committee on the consensus general fund revenue estimate, stating the consensus revenue estimating group reviewed and updated the general fund revenue outlook prepared in August 2013. Fiscal Year13 revenue was $52 million greater than the August forecast, with the largest increase in personal income tax, which added $30 million, and reversions, which added $15 million. The FY14 recurring revenue is expected to be $84 million over the August estimate, largely due to a reduction in estimated high wage job credits, growth in personal income tax and reversions, and stronger oil and natural gas receipts. Secretary Clifford said changes to FY15 recurring revenues are offsetting, leading to a net decrease of $3 million. After these reversions, total recurring revenue is estimated to have fallen 1.6 percent in FY13. It is projected to grow by 2.7 percent in FY14 and 5.5 percent in FY15. "New money" is now estimated at $293 million, equivalent to 5 percent of FY14 appropriations. He said reserves were 10.6 percent of recurring appropriations in FY13 and now projected at 9.3 percent in FY14. While the revenue outlook is generally positive, it relies on elevated oil prices that may prove optimistic if the unprecedented boom in domestic oil production continues, lowering prices, or if expected growth in emerging markets does not materialize. The state should maintain reserves of at least 10 percent to mitigate this and other potential risks.

Elisa Walker-Moran, chief economist, DFA, discussed December 2013 forecast revisions, stating gross receipts tax (GRT) decreased slightly in FY13 due to higher-than-expected sequester impacts but went up in FY14 due to lower high wage jobs tax credit payments. Insurance tax went down due to the delayed roll-out of the Affordable Care Act and increased due to lower estimate of credits for New Mexico Medical Insurance Pool assessments. Personal income tax (PIT) went up due to higher realized collections and lower forecast job credits. Corporate income tax (CIT) is now expected to rebound gradually over the next several years, a reflection of national trends. "Other" revenue increased, due to improved investment results in the land grant permanent fund and higher forecast earnings on treasure's balances. Ms. Walker-Moran discussed annual changes and trends in major revenues with growth in construction, mining and oil and gas extraction, retail trade, manufacturing and a slight decline in professional, scientific, and technical services. Ms. Walker-Moran talked about the national economic outlook, saying inflation-adjusted gross domestic product grew 2 percent in FY13. Additionally, business investment in FY13 remained low and the housing recovery slowed as concerns of an exit by the

Federal Reserve from its bond-buying program caused fixed-mortgage rates to increase. She said Moody's analytics forecasts that the Federal Reserve will postpone any reductions in its bond buying program until spring 2014, at which point it will begin to taper these purchases. Unemployment remains a concern and ended FY13 at a rate of 7.6 percent according to figures produced by the Bureau of Labor Statistics.

Secretary Clifford discussed the New Mexico economy, stating the state was significantly impacted by the sequester and federal budget cuts as federal spending on the state's research labs and military bases are large contributors to the overall state economy. Fiscal year 13 taxable gross receipts growth was only slightly depressed; however, it increased 2.2 percent over FY12. Sectors contributing to growth were oil and gas production, tourism, construction, and financial services. Government employment detracted from job growth and future federal spending cuts remain a potential threat to the more robust economic growth for the state. Secretary Clifford discussed energy markets, highlighting a 17.5 percent increase in oil production in FY13. Natural gas prices in the state averaged $4.40 per thousand cubic feet in FY13, about 60 cents below FY12. The consensus forecast has natural gas prices averaging $4.85 in FY14 and $5.10 in FY15. These prices are lower than the August forecast, reflecting a slight decline if FY13 from previous estimates. Natural gas volumes were 4.2 percent lower in FY13 compared with FY12 and are projected to decrease in FY14 and FY15 due to unfavorable financial outlook for natural gas.

Secretary Clifford reviewed forecast risks, stating federal policies on balance pose a negative risk to the outlook. The December forecast adjusts for temporary sequestration of federal Mineral Leasing revenue in federal fiscal year 2014 and assumes this revenue will be returned to the state in early FY15. The extension of sequestration could impact gross receipts revenue and personal income growth in FY15 and beyond. The FY14 forecast assumes strong oil prices. That assumption is based on rapid growth of demand in emerging market economies and continuing challenges to oil supply in key exporting nations. Positive risks to the forecast include potential for stronger growth in personal income and corporate tax revenues.

Secretary Clifford reviewed the general fund summary, stating the FY12 Comprehensive Annual Financial Report (CAFR) review suggested an additional $31.7 million should be reserved as a contingent liability for reconciling previously un-reconciled cash transactions, bringing the total amount reserved as of the end of FY12 to $101.7 million. He said this is a preliminary figure because a complete reconciliation of outstanding issues will require a significant amount of additional work. Mr. Clifford gave a bond capacity update, stating general obligation (GO) bond capacity is estimated at $167 million. Senior severance tax bond (STB) capacity is estimated at $284.7 million. After subtracting previously authorized project funding and legislative earmarks, STB capacity for the new projects is estimated at $184.8 million. Supplemental severance tax bond (SSTB) funding for public school projects is estimated at $175.2 million. A total of $626.9 million of new capital outlay funds is available. Secretary Clifford reviewed a number of pressures on the general fund budget, including tobacco revenue, lottery shortfalls, the settlement of union lawsuits, and issues regarding maintenance of effort and the receipt of a significant number of information technology (IT) requests. He said the department will not propose a significant amount of new spending or tax cuts in the budget.

Senator Beffort asked if the department analyzed how sequestration and the loss of laboratory jobs will affect the budget long term. Secretary Clifford said there is no question that the professional, scientific and technical services sector is at risk, and the department does not expect strong growth but is hopeful for stabilization.

Representative Tripp asked if a settlement with unions over wages is anticipated this year. Secretary Clifford said negotiations are ongoing and the department does not have a time frame but will have better numbers in time for the session.

Senator Cisneros asked what department is responsible for conducting an audit of the CAFR. Secretary Clifford said the state auditor directs DFA to audit the report, which he has done. Now it is the responsibility of DFA to hire an auditor. DFA has submitted a recommendation to the auditor's office and is awaiting his approval. Senator Cisneros asked about severance tax bond funds and when the Legislature can expect a detailed listing of projects from the executive along with their costs. Secretary Clifford said they can expect a list before the start of the session. Senator Cisneros suggested a collaborative effort with the executive in prioritizing critical water projects. Secretary Clifford said some communities have with critical water supply shortages due to a lack of maintenance and support of the water supply infrastructure. The department wants to ensure water fees collected are spent on supporting that infrastructure.

Representative Gray asked what kind of oversight the department has on water projects. Secretary Clifford said water projects are overseen by the Water Trust Board, which comprises an assortment of legislative, executive, and community representatives. He said the council has a memorandum of understanding with the Environment Department to provide project oversight. He said the department is working to coordinate the executive recommendation with the Water Trust Board applications. There are 125 projects requesting Water Trust Board funds with a total value of approximately $140 million.

Senator Smith spoke about capital projects and suggested there be preliminary questions and correspondence going out to communities that funding will be predicated on what is being done at the local level. He said correspondence should address local rates and include comparisons with surrounding communities to see what communities have done for themselves. He then discussed federal inflation, asking if oil prices decline will offset any inflation for food. He asked what the inflation rate is expected to be on food. Leila Burrows, chief economist, Department of Finance and Administration, said it is expected to be between 3 percent and 5 percent. Senator Smith asked if the state can anticipate enough reduction in fuel cost that it would mitigate the increase on food cost. Secretary Clifford said the 2 percent reflects mitigation of certain pressures like food inflation within the overall market basket. Ms. Walker-Moran stated according to Global Insight the food and beverage forecast indicates a 1.5 percent increase in the cost of food over the next few years.

Senator Padilla asked about general fund reserve detail and if there is an amount or percentage that does not affect our credit rating. Secretary Clifford said rating agencies tend to focus on the overall total number. He said a concern has been raised about the components of the reserve; there are several different accounts that comprise the total that are the operating reserve at about $255 million. The concern has been expressed that the tobacco permanent fund is intended to be a permanent base from which we would use the earnings to make appropriations. Some are concerned it is not as liquid as it was intended to be. He said the funds are available to the Legislature if appropriated by a majority vote in the case of a budget shortfall to draw on that reserve. Senator Padilla asked if there is an amount or percentage that should be the goal. Secretary Clifford said views differ but the administration thinks 10 percent is a prudent minimum.

Medicaid Financial Reconciliation and General Fund Financial Summary and Fund Balances. Ricky Bejarano, deputy cabinet secretary and state controller, Department of Finance and Administration (DFA), stated a $64 million accounts receivable booked to the federal government over the years is not going to materialize. Brent Earnest, deputy secretary, Human Services Department (HSD), spoke about a Medicaid shortfall stating at one point the department estimated a $103 million shortfall, due to receivables that have been built up over time. He said the department took several actions to ensure it would not be a continuing problem and since has found another $64 million that is not reconcilable. The department has reviewed the process to ensure this is not a current year issues and is certain that it is not; the FY13 books are clean with no outstanding receivables and has satisfied the one accrual the department had.

Hector Balderas, State Auditor (OSA), discussed the release of the FY12 components appropriations general fund audit, which contained a note of disclosure that emphasized DFA's management recording a potential loss of at least $70 million. The financial statements were an estimated result from the reconciliation of the state investment pool. The contingent liability was not driven by the audit firm's position at that point. DFA constructed a contingent liability because it was hesitant to sign a management representation letter for the general fund audit. The management letter would have stipulated there was no impact to the general fund as a result of the cash reconciliation problem. Mr. Balderas said the report also indicated DFA's weakness of internal controls related to their identification, evaluation, and impact of the reconciliation problem to the general fund. The finding indicated DFA did not have procedures to identify, evaluate, record, or disclose potential losses in financial statements.

Prior to the release of the audit report there were reports of concerns of the methodology used to determine the $70 million figure. OSA has been called on to offer insight on how this figure has grown to more than $100 million. According to OSA's fact finding these are months in which it appears DFA ceased efforts at cash reconciliation as compared with previous years. Due to the impact on available state resources and the information used, it is of highest importance that the amount reflected as a potential liability be based on sound accurate and complete methodology.

In late September, DFA testified the amount of the liability was being increased to $101.7 million. This increase of the estimation was never discussed with the Auditor's Office prior to DFA publicly disclosing the estimate. Upon hearing of the increase, the OSA noted the increase in the FY12 comprehensive annual financial report (CAFR) and discussed OSA's concern with DFA's methodology and calculation of loss, which does not completely factor in the data relative to the matter. There may be other information critical to DFA's process and the LFC in considering how widespread this problem is. Mr. Balderas said OSA was informed that DFA had claimed the majority of the contingent liability was attributed to two agencies: HSD at $64 million and the Public Education Department (PED) at $20 million. DFA proposed to transfer money from general fund to HSD and PED to cover related federal deficits. He said it is unclear what authority OSA would be documenting that would support such a transaction without legislative approval.

Lastly HSD sought legislative approval in prior years to cover cash shortages resulting from federal fund deficits. HSD received a special appropriation for $35 million in FY12. This calls into question why HSD is proposing a transfer from the general fund to cover the $64 million in shortage when it would appear that there has been past legislative authorities to address some of these issues. Mr. Balderas said OSA continues to monitor the status regarding the cash reconciliation problem. OSA has requested status updates from DFA on a monthly basis regarding the cash reconciliation remediation project. Thus far, status reports have not shed enough light into the status and potential completion of the project. OSA has issued a directive to all independent public accounting firms that conduct governmental audits to follow up on prior audit findings regarding the cash reconciliation issue. OSA has directed agencies to provide copies of cash reports to the agencies' independent public accounting firms explaining what policies the agency has to ensure accurate cash balances.

Chairman Varela discussed action taken during the 2013 legislative session to release $70 million to cover the shortage, language was written in the General Appropriation Act and was vetoed by the governor. Mr. Bejarano said the language was vetoed because the executive believes the errors are from prior years and the Financial Control Division has the authority to correct the accounting records. Chairman Varela asked for clarification of the statutory definition of deficiency and asked how much the committee can rely on the CAFR report. Mr. Bejarano said the department has less than optimal reliability on the CAFR report because since 1995 the CAFR has always been reviewed not audited. The first notification DFA received from the auditor that the CAFR was due for audit was in 2012; the department has subsequently received notice for 2013 and has gone out to bid for the audit. Mr. Bejerano said it is important to note this presentation is about seven years late and $101 million short. He said this has been an issue since SHARE was implemented. The auditor has given a written notification that he was aware of the problem and at any given point a special audit could have been conducted of DFA. Mr. Bejarano agreed this is a problem and expressed the department's willingness to work with OSA to resolve these issues.

Chairman Varela asked what the penalty is for overdrawing an account. Mr. Balderas said it is unclear; we are having trouble identifying what fiscal year that activity occurred. He said these were federal funds the state was expecting to receive but never came through. Mr. Bejerano added the penalty rests on the DFA secretary for overrunning funds. He noted large complex agencies such as HSD have grant funds that can have two or three periods open at one time. Chairman Varela quoted statute that provides penalties for overdrawing an account, including a fine of not more than $1,000 or by imprisonment for not more than one year or both. He asked for copies DFA's reconciliation that began in July 2013. Charles Sallee, LFC deputy director, stated the LFC had not received a copy of the reconciliation but had been in discussions with DFA about setting up a regular management report. Mr. Bejarano said DFA will provide a report to LFC and the State Auditor for the current year.

Senator Cisneros discussed the requirement of the CAFR to be an audit not a review by statute and who is ultimately responsible. Mr. Balderas said there are two audit act requirements. One is that every agency be audited on an individual level and secondly the CAFR unit is required to submit an annual audit to the Auditor's Office using the same process as any other agency would. He said there was considerable debate in 2003 whether the auditor and DFA secretary would indeed audit the CAFR report subject to the legal requirement the Legislature imposed. The last state auditor was worried he would have to choose between auditing the CAFR and then auditing every agency at every agency level. He said our department takes the position that the law requires both, noting the CAFR is not in an auditable position at this time. He said the CAFR unit has never been in the position to engage in the largest public audit and past auditors have elected to accept a CAFR report instead of an audit. Mr. Balderas said OSA has engaged DFA to begin discussions on setting a benchmark and timeframe to audit the CAFR. Senator Cisneros said no one is taking responsibility. Mr. Balderas clarified the agency shall submit an audit and the agency shall pay for it. He said it is the state auditor's responsibility to enforce the law but he cannot take over the CAFR unit. He said an audit could have panic and he wanted to build infrastructure to take on this huge project.

Secretary Clifford said the auditor has directed us to have an audited CAFR in FY13. DFA has bids in place and is awaiting the auditor's approval. He said starting with FY13 the state will have an audited CAFR. He individual agency audits would be expensive and unnecessary. He reminded the committee of the need to conduct a historical reconciliation as well.

Taxation and Revenue Department (333). Demesia Padilla, secretary, Taxation and Revenue Department (TRD) briefed the committee on current activities and FY14 and FY15 goals for the department.

Representative Sandoval asked if there were any programs to help the taxpayer who may be delinquent. Secretary Padilla said once the tax and interest have been assessed the department cannot compromise that tax due to the anti-donation clause. However, if while the taxpayer is working through the administrative process and can show they were not negligent the department has the ability to reduce or eliminate the penalty. Representative Sandoval asked what percentage of business goes to private Motor Vehicle Division (MVD) operators. Secretary Padilla said approximately 13 percent, noting a decrease in that percentage due to online operations. Representative Sandoval asked if TRD will ask for additional funds for more auditors. Secretary Padilla said TRD is working to reduce vacancies, currently at 13 percent. She said in January 2013 TRD had 259 vacancies and as of the last payroll had 147.

Senator Smith expressed concern about the Deming MVD office, stating it has more business than other offices of the same size. Secretary Padilla said Deming is one of the top 10 production offices in the state and the department is working on improving the process and making it more efficient.

Representative Tripp asked what percentages of transactions are done online. Secretary Padilla said the department is approaching 25 percent.

Chairman Varela spoke about transfers out of personal services and employee benefits and asked for an update of funded and unfunded vacancies and total expenditures for FY15. He asked that the department update the committee before the start of the 2014 legislative session.

New Mexico Environment Department (667). Ryan Flynn, secretary, Environment Department (NMED), spoke about the department's reorganization of the Hazardous Waste Bureau from the Resource Protection Division to the Environmental Health Division and described other activities in the department. He outlined the department's FY15 budget request, a 33.6 percent increase of general fund dollars to support reallocation of FTE and abatement of Superfund sites. The department is requesting an additional \$591 thousand for the Resource Management Division, \$2.5 million for the Resource Protection Division. \$442.6 thousand for the Environmental Health Division, and \$315.1 thousand for the Environmental Protection Division, a total of \$3.8 million. Next Secretary Flynn discussed the department's vacancy rates, stating it is currently at 16.7 percent, a decrease of 15.4 since January 2013.

Secretary Flynn updated the committee on the Office of the Inspector General audit. He said on behalf of the Environmental Protection Agency, the Office of the Inspector General conducted an audit of the NMED focused on charging practices associated with certain federal grants. The audit was complete on June 17, 2013, and flagged approximately \$6.4 million of charges they did not believe were properly supported. He said federal regulations require labor to be charged based on the employee's actual activity and supported by signed personnel activity reports. The department has been unable to reconcile approximately \$260 thousand of the \$6.4 million but is working toward bringing the number to zero. Once the results of the audit were revealed, the department immediately updated the timekeeping policy and conducted three internal audits to identify changes needed to ensure compliance with agency policies and federal requirements.

Secretary Flynn discussed the Kirtland Air Force Base fuel spill, stating it is one of the department's top priorities. He said this spill occurred over a number of decades and estimates on volume range from 7 million to 24 million gallons. Secretary Flynn said the department has enough information to begin to treat the spill. He said the spill is migrating north - northeast with the ridge crest wells nearest to harm's way. If the department were to do nothing, those well would be impacted in approximately five years. He said the department is working diligently to step up efforts to clean up the spill including the drilling of 115 wells to characterize the site and have recently begun implementing interim measures. Next Secretary Flynn discussed the Los Alamos National Lab legacy waste cleanup efforts. He said the department entered into a framework agreement in 2011, which prioritized how the department would move forward. The department prioritized the removal of transuranic nuclear waste (TRU) being stored above ground at area "G" and in 2011 the department had 171 shipments of TRU waste sent to the Waste Isolation Pilot Plant (WIPP) with 230 shipments of TRU to WIPP in 2012.

Secretary Flynn outlined the department's water infrastructure plan and work in communities to enhance or repair existing water infrastructure. Based on a study conducted by the American Society of Civil Engineers, New Mexico will need more than \$1 billion in infrastructure need for water over the next 20 years. He said New Mexico received a D+ grade for infrastructure condition and 35 public water systems are currently under an administrative compliance orders, which means drinking water standards are not being met with 250 communities.

JD Bullington, registered lobbyist for Audubon NM, and Beth Bardwell, Audubon NM, asked for support for a capital outlay request from the NMED related to river stewards. The $1.5 million in capital outlay funds would be invested in rivers and address damage done to water sheds and forests. Ms. Bardwell said the purpose of the program is to enhance the health of rivers by addressing the root causes of poor water quality in stream habitats. She said the state has 6,500 miles of perennial rivers and streams occupying less than 1 percent of the state but provide a critical and central role in New Mexico. Rivers and streams support the outdoor recreation industry that generates $6.1 billion in consumer spending, $1.7 billion in wages and salaries, and almost $.5 billion in state and local tax revenue.

Senator Smith discussed funds in capital outlay projects in particular waste water cash balances in excess of $100 million and asked for clarification or suggestions on moving those funds. Secretary Flynn clarified the state clean water revolving loan fund balance is $105.4 million, of which $93.8 million is currently obligated. He said $54.8 million is committed in signed loan agreements with communities. About $19 million in loans are in the process of being executed with T or C and the city of Farmington with another $20 million in offers out to five communities including Socorro, Carnuel, Grants, Roswell and Rio Rancho. He said the department has done a good job of moving $35.6 million of those funds in the last year.

Senator Beffort asked if the department has the technology to pump and treat the Kirtland AFB spill out of dry land. Secretary Flynn said the department is using a Soil Vapor Extraction (SVE) system, which extracts vapor from the soil and helps reduce the contamination from the surface to the aquifer.

Representative Larranaga asked how many Superfund sites are in New Mexico and if a particular site in Albuquerque at Broadway and Woodward is ready for reuse. Secretary Flynn said there are currently 16 Superfund sites. Jerry Schoeppner, Ground Water Quality Bureau chief, said the site is ready for commercial or residential development. Representative Larranaga asked about sediment from forest fires and asked who is responsible for cleaning sediment deposits in rivers and lakes. Secretary Flynn said the river steward’s initiative the Audubon Society referenced would assist in that effort. NMED also provide funds to communities for river restoration projects.

Corrections Department (770). Gregg Marcantel, secretary, Corrections Department (NMCD), spoke about a 47 percent to 50 percent recidivism rate in the state. He said it is his mission to ensure prisoners are released better prepared to succeed and discussed a new overarching philosophy in which prisoners are prepared to go home and stay home.

Carl Ortega, bureau chief, pointed out a $26.6 million budget reduction from FY10 to FY12 of which $12.4 million was restored. He said NMCD remains $14.2 million below FY10 levels and had a reduction in FTE of 85.5 since FY10. Mr. Ortega outlined the department’s FY15 budget request, including a total of $301.1 million with the primary increase in personal services and benefits for increase in GSD rates. He said the other cost category increase is to address inmate population growth. Mr. Ortega reviewed prison facility populations, stating NMCD had an increase of 280 inmates since FY11. A population projections study shows an increase of 1.14 percent for male inmates and a 2.25 percent increase in female inmate populations for FY15.

Aurora Sanchez, deputy secretary, spoke about deferred maintenance across facilities at a cost of approximately $230 million. She said the department has experienced a 42 percent increase for routine maintenance and repairs and projects to spend more in FY14. She discussed an increase of approximately $80 thousand in overall utility costs for six public prisons and a central office. Ms. Sanchez discussed the department's vacancy rate of 22.6 percent and highlighted the Springer facilities difficulty in hiring applicants. She said that facility's applicants cannot pass the drug test because of its proximity to Colorado and their having legalized marijuana. She said the department is having difficulty hiring in Roswell because of the higher pay scale in the in oil and gas industries. The department is continuing to recruit and train locally to reduce vacancy rates in these areas. Ms. Sanchez discussed probation and parole officer (PPO) vacancies stating the problem continues to be low salaries. Next she discussed cadet graduates and recidivism reduction initiatives.

Responding to Representative Saavedra, Ms. Sanchez said starting pay is $13 an hour for a correctional officer out of the academy and $16 an hour for a probation or parole officer. Ms. Sanchez said the classification system has a low and high end and historically the department has paid staff at the bottom of the pay scale when really they should begin at midpoint. The difficulty is the department cannot start a new person at the middle of the pay scale because there will be disgruntled veterans who are at the bottom of the pay scale.

Senator Burt asked about prison capacity and if they are close to the limit. Secretary Marcantel said they are monitoring the growth of the women's population. He said women over the last few years have been sentenced for longer periods of time. The department does not necessarily have more women coming in, just not as many leaving. Senator Burt asked what the comparison with other surrounding states is for correction and parole officers. Ms. Sanchez said metropolitan court probation and parole officers are paid $4 more an hour. Senator Burt asked if NMCD's caseload of 106 per PPO is comparable to other states. Secretary Marcantel said he would like the caseload to be closer to 70 to 80..

Chairman Varela asked about the function of the security threat intelligence unit (STIU) and how it would be funded. Secretary Marcantel reviewed problems surrounding security threat management stating there were some security threat investigators assigned permanently to probation and parole and had some assigned permanently to the prisons with a lack of communication between the two. The department has reorganized that function and placed all STIU investigators under one office reporting to the deputy secretary of operations. The requested $1.3 million expansion would pay STIU officers within the correct classification and outfit them appropriately.

Department of Cultural Affairs (505). Veronica Gonzales, secretary, Department of Cultural Affairs (DCA), said the department operates in partnership with the private sector, relying on private sector support through nonprofit foundations to supplement what the state provides for core operations. Private dollars help to offset and support education programs and exhibit costs. The department also relies heavily on a substantial core of volunteers. DCA serves over 1.2 million people a year at museums and historic sites. She said nearly 10 percent of all jobs in the state are in the arts and cultural industries more than construction and manufacturing industries combined.

Ms. Gonzales said every vacancy within DCA is in the recruitment process with the exception of 10 being reclassified. She said DCA has filled more than 85 positions since January 2013 and is working aggressively with the State Personnel Office to fill vacancies, with a goal to have all current vacancies filled by the end of this fiscal year.

Ms. Gonzales presented DCA's FY15 budget request, including $900 thousand from the general fund to phase in replacement of non-recurring fund balance being used to support the departments recurring operating budget and $375 thousand from the general fund for recurring operating costs to improve services at the Museum of Space History. Ms. Gonzales said the museum's attendance dropped to a low of just over 70 thousand from upwards of 200 thousand. During the 2013 legislative session, $400 thousand was appropriated for much needed improvements, the city of Alamogordo matched state funds with $300 thousand. She said DCA is also requesting nonrecurring special appropriations funds. $425 thousand to continue to meet legal obligations to maintain the historic Los Lucero's property, $375 thousand to make immediate improvements to the state historic sites, and $1.3 million for three information technology requests. Ms. Gonzales outlined DCA's capital outlay requests, including $10.8 million for critical repairs and upgrades across all museums and historic sites, $2.3 million to complete construction projects already underway, $2.4 million for exhibit improvements across the department, $1.7 million for equipment upgrades, and $2.5 million to construct a collections storage facility.

Devon Ross, publisher, Red Mountain Press, discussed the establishment of the official position of a stare poet laureate. He said poet laureate programs are normally housed and managed in some administrative agency and the poet typical has a term of two years. The poet laureate is expected to maintain a high public profile by organizing and presenting programs throughout the state. Advantages of a poet laureate program include the poet's unique recognition, the public's exposure to fine literature. It also offers a way of showcasing the states creative culture. The cost of poet laureate program varies from state to state. The extent of the laureate's stipend, travel, and program activity will be largely budget-driven. Senator O'Neill said New Mexico is one of four states that does not have a poet laureate program and emphasized his support of the program.

Representative Kane discussed the New Mexico Music Commission and asked for the committee's support to fund the position of commissioner and New Mexico's music industry. David Schwartz, chair, New Mexico Music Commission, spoke about the benefits of having a music commissioner who would provide economic development through the production of 15 television shows aired nationwide and education through a series of seminars on the business of music. He said the online directory developed and maintained by the commission has proven invaluable in facilitating employment of New Mexico musicians.

Jaime Clements, president, Museum of New Mexico Foundation, said the private foundation is working closely with Secretary Gonzales. David Caffey, chairman, New Mexico State Library Commission, said the committee's support is critical for public, school, academic, and tribal libraries, as well as services to rural communities through book mobiles. Mr. Caffey said because of advances in small public libraries and online services book mobiles have been reduced from six to three. He said libraries are an engine of democracy and upward mobility.

Chairman Varela asked Secretary Gonzales the status of contracts and distribution of dollars for the International Folk Art Museum and the Lensic Performance Arts Center. Secretary Gonzales said the department is in the process of issuing a request for proposal (RFP). Chairman Varela expressed concern with the department's inability to move dollars appropriated in March 2013. Secretary Gonzales said the department evaluates qualified partnerships with outside entities and how those partnerships will support their mission.

Representative Larranaga asked if the department tracks funds from foundations, other state funds, and federal funds for all cultural facilities throughout the state. Secretary Gonzales said the amount collected varies greatly on an annual basis.

Representative Salazar asked for an update on the Los Lucero's historic site. Secretary Gonzales said the 148 acre historic ranch received an appropriation during the last legislative session which was used to fund the preservation of the site including fire mitigation. She said the department has hired a manager for the site who is working aggressively to put together programming and a business plan for site.

State Engineer/Interstate Stream Commission (550). Scott Verhines, state engineer (OSE), said court decisions from the Tri State and Bounds lawsuits have increased workloads for both the Water Resource Allocation Program (WRAP) and the Litigation and Adjudication Program (LAP) because increased monitoring and facilitation of water administration agreements among all users. He said the Animas-La Plata Project has reached its full capacity and now requires additional OSE staff time beyond what has historically been available. He said OSE is working with the U.S. Bureau of Reclamation (BOR) on the development of a top water bank for the Navajo reservoir. OSE staff have been spending considerable time over the last year to provide input on the bank development and will have a significant role to fulfill in the verification permitting and administration of water rights being put into and or taken out of the top water bank. Next he discussed the Aamodt tribal settlement, the Taos Pueblo Indian Water Rights Settlement agreement, and the changes to the subdivision review act.

Estevan Lopez, director, Interstate Stream Commission, said the Colorado River basin supply and demand study released in December 2012 identified the projected shortages for the entire basin between 3.2 million and 7.7 million acre-feet by 2060. He said this is a huge amount of water that must be made up or conserved. To address this shortage, several work groups have been established to evaluate and implement incremental solutions.

Senator Beffort asked if Texas has filed a lawsuit against New Mexico for under-delivery of water. Mr. Lopez said Texas has initiated a law suit and requested the Supreme Court take action against New Mexico. The Supreme Court requested advice from the Office of the Solicitor General and is currently waiting to hear that advice. Senator Beffort asked if the department will seek additional funds for litigation costs. Mr. Lopez said $6.5 million was appropriated last session and he believes that amount will be enough to fund litigation.

Senator Cisneros asked where the state is in terms of meeting a state match for the Indian water rights settlement. He said the state's match to that settlement is $130 million to the federal $1.3 billion. Mr. Lopez said there is a total of $54 million remaining. Senator Cisneros asked if the state received credit for any Navajo Nation projects that were developed. Mr. Lopez said the estimate includes the credit. Senator Cisneros asked about the irrigation works construction fund and if the department was going to ask for additional funding. Mr. Lopez stated the request is the same as last year, which is approaching $15 million. He said that fund is headed for a crash. He directed the committee's attention to a graph, which outlines the OSE operating budget with an increased reliance on the irrigation works construction fund over the past years. Senator Cisneros asked if the executive has a listing of water projects that can be categorized as critical. Mr. Lopez said the Water Trust Board had 124 initial applications totaling $145 million in requests for water projects statewide. Part of the governor's initiative for capital outlay water projects is to prioritize critical projects. Responding to Senator Cisneros, Mr. Lopez said $7.5 million would stabilize the irrigation works construction fund.

Representative Bandy asked about the irrigation works construction fund, stating the corpus of that fund cannot be spent with the exception of the amount distributed each year by the constitution. He asked of the $14 million what percent goes to irrigation works construction projects. Mr. Lopez said $1.9 million goes directly to acequia projects and the remainder goes to support irrigation works. Representative Bandy asked about the Colorado River compact and if the state will meet the delivery obligation this year. Mr. Lopez said the state would be able to meet their delivery obligation.

Chairman Varela asked for a funded FTE count and a budget projection for FY15. He suggested the state engineer discuss with the executive a shift from using trust funds to using general funds for operations purposes.

Tuesday, December 10, 2013

The following members and designees were present on Tuesday, December 10, 2013: Chairman Luciano "Lucky" Varela; Vice Chairman John Arthur Smith; Representatives Henry "Kiki" Saavedra, Larry A. Larrañaga, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, and William "Bill" J. Gray; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Mary Kay Papen, George K. Muñoz, Carroll H. Leavell, Steven Neville, and Pete Campos. Guest Legislators: Representatives Donald E. Bratton, Jimmie C. Hall, Rodolpho "Rudy" S. Martinez, Tomás E. Salazar, and Jim R. Trujillo. Senators William F. Burt, Michael Padilla, and Clemente Sanchez.

Higher Education Institutions (952). José Garcia, secretary, Higher Education Department (HED), reviewed the department's FY15 budget request for colleges, universities, and special schools; institutional efforts to implement changes to providing remedial education and improve students' college readiness; and the department's recent changes to reviewing requests for research and public service projects (RPSPs).

First, the secretary described changes to the instruction and general (I&G) funding formula to improve the validity of performance metrics used and increase confidence in reported performance gains. As a result of formula changes, the department's FY15 budget request (1) redistributes 10 percent of the FY14 I&G general fund appropriation in proportion to the performance of each of the 24 institutions and (2) allocates new general fund revenues based on a three-year rolling average of the number of certificates and degrees. Averaging performance for new funds mitigates annual gains/losses of student performance and provides stability in funding. He reported the formula changes were the work product of a department-directed technical committee, though it was outside the committee's scope to recommend particular changes.

The department's FY15 I&G general fund recommendation is $591.3 million. The request is $8.26 million, or 1.4 percent, greater than the FY14 general fund level. The increase includes $404,193 for growth in completed student credit hours and increases in awards institutions granted. While not used as the basis of the department's revised FY15 budget request, the secretary described formula changes proposed he believes the governor will consider using to build her I&G formula recommendation due in January.

The secretary acknowledged college and university presidents and governing board members present. Bradley Hosmer, member of the University of New Mexico's (UNM's) board of regents, presented the need for increased educational attainment to maintain global competitiveness. Former Lieutenant General Hosmer testified that a strategic step for the state would be to improve our educational achievements therefore our future economic growth rate as well as quality of life and state revenues. In his opinion, the state needs to ensure higher education is a more effective and coordinated system with a single I&G funding formula recognizing how well each university and college performs.

Gerald Pitzl, HED policy analyst, discussed remedial or developmental education for academically underprepared students entering college. Mr. Pitzl reported that, since 2002, an average of 50 percent of recent public high school graduates entering public colleges and universities required one to three remedial classes. Between 65 percent and 70 percent of Native American high school graduates required remediation, though the percentage of Hispanic graduates needing remedial education has declined since 2008.

Glenn Walters, HED deputy secretary, briefly discussed the department's revised process for considering and requesting funding for research and public service projects (RPSP's). Funding requests for new projects must be considered initially by HED to determine whether the new request will presented to HED, DFA and LFC. The department requested $110 million for RPSPs, with an additional $5.6 million primarily for projects at UNM and New Mexico State University (NMSU).

Katharine Winograd, president of Central New Mexico Community College (CNM) and the New Mexico Independent Community Colleges (NMICC), noted the importance of focusing on how the state supports institutions for improving student success and doing so in a context of student performance in other states. NMICC generally supports the I&G formula's inclusion of performance-based funding and increasing educational attainment for all New Mexicans, but requests the Legislature also fund mission-specific measures. For community colleges, NMICC offered to work with LFC and the Legislature on funding for awarding students who complete academic milestones (completing 30 credit hours) and earn college credit while in high school. NMICC also supports compensation increases for faculty and staff should the Legislature fund increases for FY15.

John Madden, president of Eastern New Mexico-Roswell (ENMU-Ros) and president of the New Mexico Association of Community Colleges (NMACC), outlined his support for performance measures as a tool for institutional funding. He expressed interested in performance measures in several specific areas, such as course completion, program completion, and dual credit options. He specifically called for the state to support workforce programs that address high demand skills.

Steve Gamble, president of Eastern New Mexico University (ENMU) and speaking for state's comprehensive universities, thanked the LFC on behalf of colleagues, students, and staff for their support of higher education. During the 2013 interim, comprehensive university staff worked closely with LFC, DFA, and HED staff on the I&G funding formula and improving accountability. Recognizing that all the state's higher education institutions have proposed an alternative I&G formula approach to the department's formula and request, Mr. Gamble discussed several reasons for supporting the alternative, mission-based, performance-driven funding model, particularly focusing on the clear and direct approach to rewarding institutions for improving performance outputs. He said this approach has the potential of equally rewarding two-year and four-year institutions, while maintaining the focus on student success at different points along the academic pipeline.

Daniel Lopez, president of New Mexico Institute of Mining and Technology (NM Tech) and the Council of University Presidents (CUP), repeated support for performance-based funding but said there are many good ideas focused on improving student success. He repeated that higher education institutions are in favor of performance-based funding but there must be continuing dialogue on the I&G formula mechanics and funding levels. CUP member institutions expressed the importance of a transition period and mission differentiation simply meaning not every sector has the same role to play and the formula that serves everyone may unintentionally penalize other institutions.

Representative Varela requested the department and institutions analyze both the department's formula proposal and the institutions' proposal. He recognized the secretary's willingness to collaborate with institutions, and analyzing both formula approaches before the session would be a good start. Mr. Lopez recognized that the LFC will likely base its budget recommendation after making changes to the institution's or department's proposals, and the Legislature will make further changes as part of the appropriations process. Institutions will work with the department and members to analyze impacts of formula changes on funding levels.

Senator Papen requested comments from the state's largest universities on the formula proposal. Robert Frank, UNM president, offered the university's continued support of a performance-based funding formula, seeking additional incentives recognizing mission-differentiation. He highlighted the importance of institutions' willingness to work with the department to find common solutions to a number of outstanding issues. Mr. Frank responded to Chairman Varela's questions about the university's ABQ Innovate proposal and possible impacts for the state.

Garrey Carruthers, NMSU president, also emphasized the importance of working together to find common ground on formula mechanics and maintaining a focus on student performance. Should the secretary convene a dialogue on the formulas, as has been requested, institutions will participate. He also noted the critical need to increase salaries to be competitive with other institutions.

Representative Tripp asked the institutional leaders and secretary about the formula impact of reducing 2.5 percent or the department's requested 10 percent of prior-year I&G funding in building the FY15 budget recommendation. The secretary stated that 10 percent is desired, and that in future years, that percentage may be higher. President Lopez acknowledged legislators' and the executive's interest in having some amount of prior-year funding "at risk" for institutions to recompete for those funds. He noted 2.5 percent does not destabilize the majority of institutions, though going higher will reduce funding for many institutions.

Senator Neville expressed concern in the complexity of the department's formula and asked whether there are no unintended consequences with implementing formula changes quickly. Secretary Garcia replied that there is no guarantee that there will not be unintended consequences; however, the state must continue to focus on improving student performance, using all tools available, to increasing the educational levels of residents.

Senator Leavell expressed concern that a community college may be inadvertently penalized because students may not graduate within a certain amount of time. Secretary Garcia reported that the formula rewards institutions for graduating students in a shorter time period, leaving institutions to determine the best ways to help students and receiving state funding in a timely way. He also noted that mill levy and local taxes provide additional revenues to mitigate changes or losses in state performance funding. President Winograd expressed concern about concept of mill levy funds supporting one group of students and state appropriations support others. She said it is important to work with the secretary to improve the I&G.

Representative Larranaga asked what type of programs are in place to fuel economic development and growth in the state. President Lopez said New Mexico Tech has a center for leadership and technology commercialization, which has support from the business community to support movement of intellectual property from the university setting into the commercial market. Representative Larranaga also encouraged the department and institutions to work together otherwise FY15 higher education funding could be impacted.

Representative Tomas Salazar asked if proposals for reauthorization of the federal Higher Education Act have been analyzed for impacts to state institutions. The department has not analyzed reauthorization proposals for institutional impacts. Institutional leaders noted that changes in funding at the federal level, whether due to sequestration funding levels or program changes, provide more volatility for institutions, particularly as state funding is changing at the same time.

Representative Bandy asked if there was a guarantee that degree quality is maintained and if there is a way to assess commonality of degrees across institutions. Secretary Garcia said there are no guarantees that quality will maintained; however, national and program-specific accrediting bodies provide a minimum quality standard.

Senator Padilla asked if the Workforce Solutions Department, HED and Economic Development Department were collaborating on job creation and training efforts. Secretary Garcia said they have had limited contact, though HED has studied what is needed in New Mexico and has a goal to match needs with programs. Senator Padilla would like to see greater work together, and support legislative efforts on the same issue.

Senator Munoz asked about the department's pending rulemaking, to revise and amend the regulations affecting the I&G funding formula and institutional budget development. The rulemaking, with comments due December 24, 2013 and a hearing on January 9, 2014, sets the percentages of performance-funding to be required in the budget request (rising from 5 percent to 25 percent over five years), removes criteria considered in the current formula, among other changes. Senator Munoz questioned the department's interest in collaborating with institutions on the formula since the department did not provide institutions with the proposed rules and given language in the proposed rules. The secretary was unclear about the January hearing date. He noted that the proposed rules would align current regulations with the department's formula proposal.

Chairman Varela asked if the state had a specific goal for increasing the number of degrees and certificates. While the state does not have a specific goal, the secretary reported that national organizations, such as the Lumina Foundation and the Georgetown Center for Education in the Workforce, have proposed that 60 percent of the population should have postsecondary credentials for the United States to be globally competitive. Chairman Varela asked what the plan is for the students completing programs. Secretary Garcia stated HED is working with institutions to have goals targeted to New Mexico's needs, citing a meeting on December 9, 2013 with board of regent members, chief academic officers, and others to begin working on goals. Chairman Varela suggested HED play a role in the jobs council to identify state needs and train students in those fields.

Lastly, the chairman requested HED run funding through the department's formula and the institutions' formula to identify and compare institutional funding.

Higher Education Department (950). Secretary Garcia said the department's key initiatives for FY15 include a Native American college-readiness initiative, completing the state's longitudinal data system (K-college), articulating higher education's statewide and campus goals, creating a performance dashboard for institutions, evaluating solvency of the Legislative Lottery Scholarship Program (LLSP), improving the capital projects process and auditing, reforming RPSP consideration, improving adult basic education, and administering the private and proprietary schools program.

Kevin Romero, HED's acting administrative services director, described the department's FY15 budget request, including $35.2 million in general fund revenues. The department requests $4.4 million for personnel services and employee benefits, an increase of 14.4 percent over FY14 operating levels. The department again requests the authorized FTE level be reduced by 1.5 FTE, representing the Education Trust Board staff.

Mr. Romero said the FY15 request includes an increase of $476.2 thousand from the general fund, a 1.3 percent increase over the FY14 operating budget. The increase addresses a $181.8 thousand increase in operating costs, $188.4 thousand increase in program costs, and $106 thousand increase in financial aid programs. He went on to discuss FY15 other transfers increase of $11.8 million attributed to a $203.7 thousand decrease of instructional materials, $138.6 thousand increase for the private and proprietary schools division, $1.6 million increase in financial aid programs and $10.2 million increase for the lottery scholarship program.

Mr. Romero reviewed a staffing summary stating FY14 there were 53 authorized positions: 33 are funded with general fund revenues, 16 are federally-funded, and four are fee-based. Currently the department has 17 vacancies at various stages of hiring or advertisement.

Mr. Romero discussed the department’s $11 million general fund supplemental appropriation for FY14 to provide sufficient funds for NM legislative lottery success scholarship for spring semester. The amount was projected based upon receiving $9.8 million from the New Mexico tobacco settlement fund. The department also requested BAR language to allow HED to transfer a fund balance of $55 thousand for operations of the private and proprietary schools division for FY14. He said the department also submitted FY15 BAR language to allow HED to transfer up to $50 thousand from fund balance for operation of the private and proprietary schools division. They also request FY15 BAR language to allow HED to transfer from special programs fund balance to address student financial aid programs including the solvency of the LLSP.

Chairman Varela asked for the status on the tobacco settlement permanent fund transfer for FY14. Secretary Garcia said the department expected approximately $9.8 million pursuant to legislation enacted during 2013. Charles Sallee, LFC deputy director, responded that the attorney general has opined that the spring FY14 payment may be reduced to pay for the arbitrated loss in 2003. The Legislature will have to be decide on whether to replace any loss of tobacco settlement funds for affected programs. Chairman Varela said language in the General Appropriation Act of 2013 requires DFA to adjust other revenues, so DFA should notify agencies or programs if the amount is something other than the $9.8 million to avoid overspending.

Representative White asked for clarification on financial aid programs and if they are funded annually. Mr. Romero explained that financial aid programs are funded annually, from general fund, other state funds, federal funds, and fund balance. Because general fund appropriations to the HED student financial aid program are nonreverting, Representative White asked for the current fund balance and spending from the fund balance. Mr. Romero reported the current fund balance of $22 million has not been expended, the FY13 year-end balance was approximately $18 million plus. He noted the department’s FY15 request includes $1.6 million in this fund balance to support six financial aid programs that were incorrectly funded in prior years from other revenues.

Members had questions about the lottery scholarship program. Given the department’s recommendation that the lottery tuition fund should maintain a $10 million fund balance, Representative White asked the department to provide monthly fund balances for the lottery tuition fund. Senator Munoz asked the secretary to confirm the governor was requesting between

$11 million to $20 million in general fund revenues to fund full scholarship levels for FY14 and maintain a fund balance for FY15.

Members asked questions about the department's financial audits. Mr. Romero reported that the HED would file its FY13 audit by the statutory deadline. He said he could not address specific questions about findings until the State Auditor reviews and releases the audit. Senator Cisneros expressed concerns with the FY12 adverse and qualified opinions and asked whether any prior year findings remain outstanding. In response to Representative Hall, Mr. Walters reported the department has cleared all questions from the U.S. Department of Education regarding audits of the state's administration of adult basic education funds. Senator Clemente Sanchez asked about the lack of an opinion on the department-administered loan programs. The secretary and Mr. Romero noted that the department's auditors are reviewing loan accounts to determine whether some accounts can closed or debts can be collected. The secretary noted that staff are working on ways to resolve problems that have existed for more than a decade and tracking loans. Currently, the department maintains 1,600-1,700 loan records.

NM Lottery Authority; Lottery Scholarship Work Group Updates. Sylvia Jaramillo, director of finance and acting CEO of the New Mexico Lottery Authority, said high-profile jackpots in FY13 resulted in more players playing the lottery and helped raise $43.7 million for legislative lottery scholarships. She said the department recently negotiated a new contract for advertising services at 2.5 percent under industry standards. Keeping contracts in very favorable terms will help continue to meet the obligation to return 30 percent of net revenues to the legislative lottery scholarship fund.

Secretary Garcia said HED has requested $11 million in nonrecurring general fund revenues to cover the anticipated shortfall in revenues to support spring semester scholarships. However, this amount may be too low to meet full scholarship need if $9.8 million or a lesser amount is not transferred from the tobacco settlement permanent fund. With respect to solvency, the secretary reported an average of $40 million annually in lottery revenues, though $67 million would be spent in FY14. He believes a permanent solution is possible while preserving the scholarships core values.

Responding to Senator Cisneros, Ms. Jaramillo said it is difficult to predict how the economy affects the lottery because the department is very reliant on running up jackpots. Instant ticket sales have flattened, and the department is working to increase sales. Senator Cisneros discussed gaming activities and the potential for two additional class three gaming facilities and what impact that will have on the lottery's anticipated revenue. Ms. Jaramillo said the department is analyzing other types of games as well as subscription clubs, highlighting the agency's goal to stay relevant in the gaming market.

Senator Cisneros asked how the issue of tuition increases affects the lottery scholarship program. Secretary Garcia said scholarship awards are tied to tuition; every time tuition goes up, it affects the entire amount of money coming out of lottery funds. He said a long-term solution cannot be reached until awards are set at value other than tuition.

Representative White stated only 10 percent of students get lottery scholarship. He asked whether there are options to increase efficiency of lottery program and reduce program costs. Ms. Jaramillo replied that the department has negotiated favorable contract terms with vendors, but these will expire in 2018. With the 30 percent required transfer, the agency will have a difficult time meeting revenue goals without reducing prize payouts. Ms. Jaramillo said the department has explored other ways to reduce costs, including reducing staff. Representative White expressed his concern with using state general fund revenues to support the lottery scholarship program and noted the secretary has the authority to limit scholarship expenditures to stay within available revenues. White also noted the department's working group failed to provide recommendations for the Legislature's consideration, and this inhibits the Legislature and executive from working on a more targeted solution to program solvency. Other LFC members recognized the secretary's statutory authority to act and reduce scholarship amounts.

Senator Padilla noted uniform support for particular program changes to improve solvency: raising the grade point average required for scholarship eligibility and to maintain the scholarship, setting the scholarship at a particular amount not linked to tuition, and raising the credit hour requirement for full-time students attending particular institutions, among other things. The senator asked HED to provide data that student groups had requested of the department to complete their analysis of solvency options. He also asked the department to provide the Legislature with an analysis of varying options, affect on scholarship revenues, and impact on students participating in the program. The secretary responded that data and options for program changes are available, and the department will present them at a later date.

Senator Clemente Sanchez noted his disagreement with the proposed program changes, particularly raising grade point and credit hours requirements. He would also like to see changes to the lottery program to improve sales.

Chairman Varela asked the secretary for the governor's position on the program. The secretary responded that he proposal will be presented before the session.

Special Schools – New Mexico School for the Deaf (980), New Mexico School for the Blind and Visually Impaired (979) and New Mexico Military Institute (978). Linda Lyle, superintendent of the New Mexico School for the Blind and Visually Impaired (NMBVI), discussed the school's programs. Representative Larranaga asked if NMBVI enrollment has declined due to medical advancements. Ms. Lyle reported that there has not been a decline because of the increase of octave nerve hyperplasia cases. Some areas are making improvements, resulting in declining needs for school services (for example, fewer cases of retinal dystrophies), but there are more optic nerve problems. Ms. Lyle said they have seen progress in the birth-to-three program and do a good job of capturing most of those kids during their time of diagnosis and referral, however there has been an increase in child abuse cases.

Major General Jerry Grizzle, superintendent/president of the New Mexico Military Institute (NMMI), described the school's success.
Representative Gray asked how many commissions are given every year. Major General Grizzle said the school commissions approximately 45 new second lieutenants every year, with 90

percent entering the National Guard and 10 percent entering the Army Reserve. Approximately a third of New Mexico National Guard officers are NMMI alumni.

Due to a scheduling conflict, Ronald Stern, director of the New Mexico School for the Deaf, and his staff were unable to participate in the LFC hearing. Chairman Varela noted that he and staff would meet with Mr. Stern following the December hearings.

University of New Mexico Health Science Center (952) Dr. Paul Roth, chancellor of the UNM Health Science Center (HSC) and dean of the UNM School of Medicine, reviewed the materials presented to the committee. He defined the HSC's strategic goals including improving patient care, improving the healthcare workforce, fostering innovation, evolving as a well integrated academic health center and nurturing an environment of diversity, integrity and transparency.

Dr. Roth reviewed particular projects at the HSC then outlined FY15 legislative requests, including $4.4 million for medical school I&G funding, $1.6 million for nurse practitioner education, $440 thousand for BA/DDS degree planning, $1.2 million for project ECHO, $355 thousand for center for healthcare workforce analysis, $339 thousand for the office of the medical investigator, $1.1 million for UNM pain center and $484 thousand for phase one of the center for childhood maltreatment. Next Dr. Roth outlined HSC's FY15 capital outlay request, including $20 million for the Domenici Center for Health Sciences Education Building and $1.8 million for the Center for Development and Disability Autism Center.

Responding to Representative Sandoval, Project ECHO (Extension for Community Healthcare Outcomes) Director Dr. Sanjeev Arorasaid Project ECHO works in 20 different disease areas in New Mexico and started with Hepatitis C. He said ECHO trains primary care physicians to treat different diseases and has found when primary care physicians treat these patients the results are better than when they have to travel to see a specialist. He said the key challenge is funding; the current annual budget is $4.5 million to $5 million n total grant and contract funding and $1.1 million in state general fund support. Dr. Arora said ECHO is dependent on grant funding and requests that state funding supplant contract and grant funding.

Representative Salazar expressed concern with practitioners who have a difficult time starting a practice in small and rural areas. Dr. Roth noted that most physicians now become employees instead of starting their own practice.

Senator Munoz asked how the Medicaid expansion would affect HSC's residency program. Dr. Roth said, in some states, Medicaid also reimburses for residency positions like Medicare does; in New Mexico, Medicaid reimburses for indirect medical education (IME) residencies. The degree to which Medicaid provides pass-through funds to cover residency slots is the state's decision. He noted many indigent patients will be reimbursed, allowing for more operating capital to cover salaries for residencies.

Senator Beffort asked if the proposed residency expansion is a limitation the federal government is imposing or is it the maximum they can ask for. Dr. Roth said it is not a federal limit; it is based on the size of the patient population, accrediting program limits and the clinical venues that are available to train residents. Senator Beffort expressed concern with the need for more general surgeons, the growing pipeline and magnitude of need throughout the state.

Representative Hall asked how fast the HSC can produce nurse practitioners and clinic, equipment, and staffing for establishing nurse practitioners in practice. Dr. Ridenour, dean of the UNM College of Nursing, reported UNM can expand the nurse practitioner program by another 24 students after the two year graduate program (for $1.65 million a year for two years); 18 of the students will graduate on time. Dr. Roth said the clinic, staffing, and equipment costs for physical set-up are approximately $600 thousand.

State Auditor (308). Hector Balderas, State Auditor (OSA), outlined the FY15 budget request of $3.6 million and increase of $106 thousand, or 3.7 percent above FY14. The request includes $65 thousand for increases in personal services and employee benefits to fund all authorized FTE. The request also includes $14.6 thousand for contractual services, modest increases for information technology and $26 thousand in category 400. Mr. Balderas asked for the committees support to create an at risk special audit fund for all at risk entities. He said at risk governments range from 90 to 30 agencies and will cost anywhere from $500 thousand to $1 million to conduct audits of special districts and rural governments that are at risk.

Senator Cisneros expressed his support for a special audit fund for at-risk districts and rural governments, stating his willingness to draft legislation to remedy the situation.

Representative Tripp asked if mutual domestics should attach themselves to a county as their fiscal agent to avoid costly audits. Mr. Balderas said the agency supports the idea highlighting the need for guidelines that state if the entity is too small they allow the state agency that is overseeing them to develop a different type of audit. He said if we had an at risk special audit fund that is separate from operational budget we could begin to send out firms and begin to resolve these problems.

Chairman Varela expressed concern about state agencies maintaining cash control, highlighting that the Financial Control Act requires the Financial Control Division maintain budget and cash control. He asked about key positions and vacancy rates and asked for a reconciliation of funded and unfunded vacancies by the time the session begins. Mr. Balderas said the 15 percent vacancy rate can be attributed to other agencies and private firms recruiting OSA staff, the lack of competitiveness in salaries compared to the private accounting sector, and the fact that OSA staff are overworked. Chairman Varela asked if the agency's budget includes the cost of auditing the CAFR (certified annual financial report). Mr. Balderas said auditing the CAFR will be a substantial burden on OSA and the Department of Finance and Administration (DFA) and he does not consider it part of the current budget.

Wednesday, December 11, 2013

The following members and designees were present on Wednesday, December 11, 2013: Chairman Luciano "Lucky" Varela; Vice Chairman John Arthur Smith; Representatives Henry "Kiki" Saavedra, Larry A. Larrañaga, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, and William "Bill" J. Gray; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Howie C. Morales, George K. Muñoz, Carroll H. Leavell, Steven Neville, and Pete

Campos. Guest Legislators: Representatives Jimmie C. Hall, Vickie Perea, Rodolpho “Rudy” S. Martinez, and Jim R. Trujillo. Senators William F. Burt, Jacob R. Candelaria, Mary Kay Papen, Sander Rue, Clemente Sanchez.

Children, Youth and Families Department (690). Yolanda Deines, secretary, Children Youth and Families Department (CYFD), said the FY15 base budget request includes $231.6 million from the general fund, reflecting a 5.27 percent increase over the FY14 operating budget. The FY15 total budget is $414.3 million, reflecting a 1.94 percent increase over the FY14 operating budget. The request funds 2,146.6 FTE with an overall vacancy rate of 8.61 percent. Secretary Deines explained how each program would benefit from a budget increase from the general fund, which spans from $214,600 revenue replacement for loss of federal funding in protective services due to sequestration to a $3 million increase in child care assistance in early childhood services.

Representative Sandoval wanted to know many people *Lincoln Pines* can hold. Jennifer Padget, deputy secretary, responded it has capacity for 48 but may be changed into a rehabilitation center to address need. She said 2,000 children are in the system. Representative Sandoval wanted to know if there was a backlog. Secretary Deines said it is a challenge and the reason for the request of an additional 15 case workers. Representative Sandoval asked if high caseloads affect case worker morale. Secretary Deines said the department has strict guidelines for response time and children are not being left behind; however, reaching the closure of these cases is more difficult.

Representative Sandoval asked about treatment foster care versus regular foster care, if the department’s facilities were appropriately staffed, and how they worked. Mr. Browsfield, director of foster care, CYFD explained treatment foster care is privatized but CYFD regulates and monitors it, stating it is a behavioral health service. Representative Sandoval discussed the issue of psycho-tropic drugs prescribed to children in regular foster care. Mr. Browsfield explained it depends on behavior needs., He said CYFD monitors how these drugs are being administered. Representative Sandoval asked about the increase they were asking for in foster care. Mr. Browsfield said the reimbursement is based on age and the needs of the child.

Representative Sandoval discussed the issue of making it easier for families to adopt. Secretary Denies said there are strict federal regulations to follow and the department has to make sure that they are in a safe home. Secretary Deines explained more about the Heart Gallery of hard-to-adopt children and how it has grown over the years. She conceded that it is an intrusive process for families who want to adopt but the department has to make sure that children are safe.

Senator Beffort acknowledged the wonderful work being done at Lincoln Pines and asked if registered homes qualify for free food service. Secretary Deines said registered homes do qualify. Senator Beffort asked if CYFD developed a way to get homes and registered families into license capacity. Diana. Gonzalez-Martinez of CYFD said with the appropriation the department received it was able to create a registered home oversight unit. Senator Beffort asked if it is a one-time appropriation or is it recurring. Secretary Deines said it will be recurring.

Representative Larranaga asked how many families were being served for home visits. Secretary Deines explained there approximately 2,000 families currently in the system. Representative Larranaga asked what kind of training is required of the contractors providing these services. Dan Haggare, deputy director of programs, CYFD said it varies with each program. Services include nurse visits, education services, and social work background, they provide these contractors with job training. Representative Larranaga asked how they involve extended families. Mr. Haggard said they try to involve all or as many family members that they can. Representative Larrañaga inquired how CYFD identified the areas for investment zones. Secretary Deines talked about risk indicators which help them identify these areas. Representative Larranaga asked if they were requesting additional funds for this program. Secretary Deines said not at this time, instead the department is focusing on supporting the infrastructure of these communities so we can grow.

Representative Tripp asked for clarification on how the model works in these communities. Daphne Hopkins, director, office of community outreach and behavioral health programs, explained it is all on a voluntary basis. She said CYFD asks the community to volunteer and in return they receive technical support and training. Representative Larranaga asked if the department conducts background checks on these individuals. Ms. Hopkins said they do not because these individuals are already working with children; however, liaisons go through background checks as well as contractors.

Representative Salazar asked the difference between the early childhood and the First Born programs. Secretary Deines stated First Born is a home-visiting program through early childhood. Representative Salazar requested CYFD provide participation numbers. Secretary Deines said they would provide the committee with that information.

Senator Munoz asked what right the grandparents have. Secretary Deines said grandparents do not have any legal rights to grandchildren, which is supported by a federal Supreme Court ruling. However, CYFD can intervene with an attorney as an interested party to seek custody similar to a divorce situation. Mr. Browsfield explained the Kinship Guardianship Act which allows relatives to file for guardianship but they have to prove their case. Mr. Browsfield said in an emergency case they can call protective services, in which law enforcement removes the child and CYFD places the child with a relative.

Department of Health (665). Retta Ward, secretary, Department of Health (DOH), highlighted department programs. Leonard Tapia, Administrative Services Division director, DOH, summarized the department's FY15 budget request totaling $548 million, a general fund increase of $2.15 million. The DOH repurposed general funds from other programs within the DOH to fund $3 million of the requested $5.15 million increase. He said the general fund re-allocation decreases $1.8 million from the public health program and $1.9 million from the facilities program, for a total of $3.7 million. He said neither decrease reduces the programs budget below FY13 actual levels. Mr. Tapia said DOH submitted a revised appropriation request to the Department of Finance and Administration and LFC to accommodate requests for reduced general fund for anticipated Medicaid expansion revenues. H said the revised request reduces the general fund amount by $3.0 million.

Representative Saavedra asked if the Jackson lawsuit is still ongoing. Brad McGrath, chief deputy secretary, DOH, explained the litigation is very complicated and will require additional staff. He said they do hope to get a formal disengagement soon. Secretary Ward explained how DOH absorbed increased risk management rates. She said the public health appropriations request included major initiatives, such as funding for cancer screening and prevention, the Women Infant Children program, rural health care, and AIDS prevention and treatment. She said there is reduced funding for tobacco use cessation and prevention totaling $3.4 million and epidemiology and response has an overall reduction. Major initiatives include vital records and health statistics totaling $1.9 million. Health emergency management totals $5.6 million and the scientific laboratory request is flat from FY14 to FY15. Mr. McGrath added no additional FTE will be needed as the agency will be re-allocating positions.

Mr. Tapia discussed the Health Certification, Licensing and Oversight and Medical Cannabis programs. He said the Medical Cannabis program continues to grow and requires more staff. He said the number of clients is growing 2,000 per year mostly for post traumatic stress disorder (PTSD) and chronic pain.

Mr. McGrath discussed vacancy rates, stating 583 positions were filled but with staff retirements and other reasons, the department has a large number of unfilled vacancies. He discussed the department’s efforts in hiring staff, including conducting job fairs and advertising on the Internet. He said there are currently 411.5 funded vacancies and 3,215 current employees.

Senator Smith expressed concern about the amount of requested money that each agency wants when they have trouble spending the money they already have.

Representative White asked for more information on how DOH was managing the Medical Cannabis Program and how it was funded. Secretary Ward said it is self-funded. However, they have hired a senior medical director and second medical director, which are new positions that require funding. Representative White asked how they were keeping up with the demand and what the impact was of the legalization of marijuana in Colorado. Secretary Ward said they were monitoring the supply and demand and monitoring the situation carefully.

Senator Munoz asked why developmental disabilities reimbursement rates were cut. Cathy Stevens said the new rates were reestablished after a rate study was conducted. Senator Munoz requested a copy of the rate study, stating in a rural setting it can become difficult for some business and they can be forced out of business. He wanted to be sure that there was no strategic cutting of rates. Ms. Stevens explained how the rates work and how each provider gets contracts and she would be happy to supply that information.

Representative Sandoval asked for clarification from staff on how departments work and if there is an oversight of all the mental health institutions. RubyAnn Esquibel, LFC staff, stated there is a behavioral health collaborative that receives different streams of funding from the Human Services Department, CYFD, DOH, Corrections Department, and courts, and these are all under the collaborative but it is lacking in complete oversight of all the different mental health organizations.

Senator Cisneros asked for more information about the Medical Cannabis Program and how one qualifies for it. Mr. McGrath shared his understanding that it is not for short-term illness but rather for debilitating conditions that do not allow you to enjoy life. Patients are also required to show evidence that they have tried other methods to eliminate their pain.

Senator Candelaria asked about compaction within the department, how it relates to morale, and if they planned to use funded vacancy monies to bring people closer to parity. Secretary Ward said all state employees want more money and she is unable to take money from different areas and raise salaries. Senator Candelaria said she did not answer the question about what their plans were to deal with the issue of compaction and morale within the department.

Chairman Varela stated the movement in the department is a major morale problem. Senator Beffort stated morale has increased with the new secretary and is not a salary issue but maybe a mitigating issue which makes her optimistic.

Representative Martinez asked if exit interviews are conducted to ask why people leave the department. Mr. McGrath said some agencies conduct exit interviews but it is not done across the board. Representative Martinez asked how the departments works with the State Personnel Office (SPO). Secretary Ward said they have great cooperation and have been allowed to post their own job listings, score and rank candidates, and be aggressive with their application process.

Chairman Varela requested the department to distinguish unfunded and funded positions and provide a projected budget.

Secretary of State (370). Dianna Duran, secretary of state (SOS outlined the department's FY15 budget request, stating the department reviewed FY08 through FY14 budgets, voting trends, and the amount submitted from counties to develop their request. She said FY15 operations and elections is $9 million, a four-year average of 1.34 percent increase. The FY15 total request is $10.25 million, but after a meeting with executive budget analyst, it was recommended that the nonrecurring expenses be extracted from the base budget. Therefore, the department is asking for a special appropriation for that amount.

Chairman Varela asked who is responsible for voting purge. Secretary Duran said there is a process that happens before a purge. She said New Mexico was unable to purge because we were not in compliance with the federal law. Currently the state is compliant and the first purge will take place in 2015 at the county level. Chairman Varela asked how the department identifies undocumented workers and how illegal voters may be identified. He also asked about the working relationship between the SOS and the governor's office to uncover undocumented workers. Secretary Duran clarified that the governor's office does not work in conjunction with the SOS, the governor's office is concerned with different items whereas the SOS strives to clean-up and create accurate voter files. Chairman Varela asked who was responsible for the voting problems in Rio Rancho. Secretary Duran said the SOS met with the Sandoval county commission and the problem was having 5 convenient voting centers. In 2014 there will be 19 convenient voting centers to alleviate the problem.

Representative Sandoval asked if the agency was covered for the upcoming general and primary elections. Secretary Duran said the department is going to get out new voting systems for the general elections but needed the continued funding to make sure that all the counties receive their ballot boxes. She clarified that ballot printing systems are different than tabulators. She said SOS asked for $19 million in three phases to replace all tabulators.

Review of Special Supplemental and Deficiency Requests. Mary McCoy, LFC staff, stated the need to keep reserves as close to 10 percent as possible. She said state agencies are requesting $89.6 million for special, supplemental, and deficiency appropriations for FY15 including $71.6 million from the general fund and $17.9 million of the other state funds. Fifty-nine special appropriations requests totaled $50.8 million including $43.9 million from the general fund and $69 million from other state funds. The requests for special appropriations ranged from a high of $14.4 million in general fund for the Public Education Department for federal special education maintenance of effort (MOE) requirements in FY15 to a low of $50 thousand in general fund for moving expenses for the First District Attorney's office. Supplemental requests include 19 requests for supplemental totaling $32.2 million including $24.6 million from general fund and $7.7 million from other state funds. Ms. McCoy stated there were six deficiency appropriation requests that included $813 thousand for the Department of Homeland Security and Emergency Management for federal expenditures not recouped by the department. There were also nine requests to extend the time to spend previous special appropriations and federal grants. Richard Blair, analyst, DFA discussed the replacement of tobacco funds in CYFD. He said it is a challenge to figure out how to replace these funds, the distribution of tobacco funds is also a challenge because we won't know if the money will be there.

Human Services Department (630). Sidonie Squire, secretary, Human Services Department (HSD), outlined the departments FY15 budget request of $5.83 billion, a 7.3 percent increase over the FY14 budget and a $18.6 million decrease in the general fund. She said the majority of funds are made of up of federal funds, $1.018 billion from the general fund, which is a decrease of $18.6 million or 1.8 percent. Secretary Squire discussed the child support enforcement budget request of $32.9 million, a 2 percent reduction from FY14. She said the Income Support Division budget request is $934.4 million and the Temporary Assistance to Needy Families (TANF) budget request is $112.1 million. She said the career links and *I-CARE* programs budget request includes a $1.35 million increase for two programs started in FY14, $750 thousand more requested for *I-CARE* and $600 thousand more requested to fund the career links program. Secretary Squire stated a $2 million total budget would serve 272 participants in the *I-CARE* program and $1.7 million total would serve 185 participants in the career links program.

Secretary Squire discussed her wish to start an initiative in the SNAP program that would require able-bodied adults without dependents (ABAWDs) to participate in mandatory requirements, such as work experience and community service. The cost of the initiative will be $461 thousand. She went on to discuss program support's FY15 request of $53.3 million, including $16.9 million from the general fund, $32.4 million from federal funds and $4 million in other revenues. She explained the upkeep of their IT program needs an additional $4.9 million from the general fund. This includes hardware and FTE for maintenance. The FY15 budget request for behavioral health (BHSD) is $61.5 million, a $2 million increase. She said the FY15 federal funds in BHSD increasing by $5.5 million due to Medicaid expansion. Many of the services usually paid for by BHSD will be paid for by Medicaid, which frees up $15.3 million in general fund savings. She said this allows BHSD to re-invest savings and expand their program in quality compliance, re-finance OPTUM value-added services, and enhance non-Medicaid services. She went on to explain that OPTUM pays services that are not part of Medicaid but because they do that they can spend the money on anything they like. She noted their contract will be ending on December 31, so that funding stream will be ending. Therefore. HSD will put $2.5 million in transitional living services and the New Mexico Crises and Access Line $1 million.

Secretary Squire said the Medical Assistance Division's FY15 request is $74.9 million, a $4.7 million increase including $13.4 million from the general fund, $58.15 million from federal funds and $2.57 million from the other state funds and revenue. She said they plan to have an expanded quality review function for Centennial Care starting January 1. HSD is also requesting to maintain services in the Traumatic Brain Injury Program with a general fund request of $62.7 thousand. She said the Medicaid program spending in FY15 is projected to be a $4.67 billion. $895.3 million from the general fund, $22.5 million less than FY14. She said HSD will have an enrollment growth of 7.7 percent from FY14 and 22 percent from FY13.

Secretary Squire gave a Centennial Care and Expansion update. She said HSD has worked with the four Centennial Care managed-care organizations for the past 11 months to ensure readiness. They will have a rapid response team and held more than 200 meetings throughout the state to inform people about Centennial Care and new coverage options.

Progress Report on Behavioral Health Services Division - Evaluation. Pam Galbraith, program evaluator, LFC, said the evaluation examined spending and outcomes of the spending related to the safety net system for behavioral health service consumers and analyzed the adequacy of resources, the potential impact of federal healthcare reform and outcomes being achieved by consumers. She spoke of key findings that were uncovered: 1) Despite increased funding, fewer people have received services and outcomes still fall short of performance targets. 2) With the expansion of New Mexico's Medicaid program, the need for state-funded behavioral services may decrease. 3) Recent issues of potential Medicaid fraud demonstrate a need for a stronger, better coordinated system to monitor program integrity. 4) The collaborative has not maintained an ongoing assessment of system capacity. 5) Evidenced-based practices provide a high probability that outcomes for consumers will improve and use of public monies will be more efficient.

Ms. Galbraith said the New Mexico behavioral health system has gone through several changes the past decade, the most significant was in 2004 when legislation was enacted creating the Interagency Behavioral Health Purchasing collaborative to administer, develop, and coordinated a single statewide behavioral health. The next major change that will occur will be this January when they will implement change in the Medicaid system that will reintegrate physical and behavioral health. This change will break up behavioral health funding among multiple managed care organizations and agencies. Ms. Galbraith went on to say the continuing cycle of change and the state's epidemiological data present sound reasoning for continual monitoring of the system. LFC program evaluations of the behavioral health system were completed four times during these transformative years. Similar findings were cited in each of the evaluations:

Utilization of services did not result in more consumers being served or outcomes improving; financial oversight of the statewide entities was lax; and payment and business practices of the statewide entities and providers were cause for concern. All of this occurred in a system that has received increased funding and served fewer clients who have needed more inpatient hospitalizations and more psychiatric emergency visits but were provided fewer crises interventions.

Ms. Galbraith reviewed the LFC recommendations including the following: The Legislature should require HSD to complete a Medicaid eligibility projection and a behavioral health needs and gaps analysis to justify existing funding levels and consider repurposing at least 50 percent of current state funding levels to Medicaid in FY16, if substantiated by the gaps and needs study. This is a pretty lengthy endeavor and they have already come forward with some repurposing for FY 15. The evaluation staff projected 17 thousand consumers in state-funded services would migrate to Medicaid, creating a savings. Second, HSD should report the results of the behavioral health provider audits to the LFC, clarify the role of the HSD Inspector General in the auditing process, strengthen oversight of OptumHealth's monitoring of program integrity of provider oversight and managed care organizations (MCO), require the statewide entity to detail analysis of changes in service costs and utilization and take appropriate action and evaluate services. Ms. Galbraith clarified OptumHealth is not a Medicaid managed-care organization in New Mexico; they are a partnership of two out-of-state United Healthcare companies not regulated by the state insurance division. She went on to say HSD should require the statewide entity to provide more detailed analysis of financial, service utilization, and provider access information for monitoring of the system. HSD was required to submit an implementation plan in response to the recommendations. They reported based on savings from Medicaid migration, HSD's FY15 budget proposes to redirect $12.1 million to enhance quality and compliance initiatives, refinance value-added services that will no longer be funded by OptumHealth and to increase funding for state-funded, non-Medicaid services. In the 2015 budget request, HSD predicts a migration of 15 thousand consumers to Medicaid. The contracts integrating Medicaid behavioral Health services with MCOs have been completed by HSD for a January 2014 start date. A subsequent amendment to that contract was issued to comply with new federal laws and regulations relating to program integrity.

Ms. Galbraith discussed the FY15 BHSD fund repurposing proposal. Their plan to repurpose is as follows: $1.6 million for compliance audit function and $3 million for technical assistance for providers. Ms. Galbraith reviewed MCO and OptumHealth contract amendments. She said the first amendment is to clarify the process for identification of overpayments and the provider's self-reporting responsibilities. Secondly, stipulate the contractor's role in recovery of overpayments. Thirdly, mandate suspension of Medicaid and non-Medicaid payments when credible allegations of fraud have been verified. Lastly, direct how recovery of funds will be dispersed.

Ms. Galbraith discussed outstanding issues, which are as follows: HSD has not finalized decisions regarding the continuing role of OptumHealth with the implementation of Centennial Care and issuance of a request for proposal for administration of non-Medicaid managed care. HSD intends to extend the OptumHealth contract through December 2014. This will be done through the healthcare exemption in the Procurement Code, not via sole source or emergency purchase. Concern over HSD's assertion contracts with previous statewide entity was exempt from the procurement code, legislation was enacted to clarify collaborative contracts are not exempt. The 2014 contract will be for administrative services: paying non-Medicaid claims, assisting with reporting of grant dollars, and quality monitoring, the full scope yet to be determined.

Ms. Galbraith stated with the change of moving more people into the HSD, and Medicaid, with the integration of behavioral health and physical health, LFC questions the need for a statewide entity. Another outstanding issue is the LFC has not received a copy of the contracted audit of the 15 providers because the department believes it would impede the Attorney General's investigation. However, the claims data and the consumer records of all the affected providers have been retrieved and secured. It is unclear why the embargo continues for these portions of the findings. HSD has questioned the role of the collaborative. Although the responsibilities of the collaborative are defined in New Mexico law, the recent year's history of the entity appears to demonstrate waning interest on behalf of statutorily identified members and at least two members have chosen to assume management of funds previously dispersed through the Collaborative. The last outstanding issue is an HSD analysis of workforce needs in the behavioral health system has not been performed since the 2002 behavioral health needs and gaps report. A 2013 LFC program evaluation reported New Mexico is experiencing a pronounced shortage of behavioral health professional. The situation will be exacerbated with more consumers seeking services through Medicaid. Ms. Galbraith said the evaluation was severely limited the quality and scope of both reports because of delays and denials for requested information. The most recent delays impacted LFC's ability to assess service disruptions in the care delivery system and analyze expenditures both pre and post transitions. In May 2013 HSD informed LFC of the contract with the Public Consulting Groups for the purpose of auditing 15 New Mexico providers for suspicious billing practices. According to the PCG report, each of the agencies failed to meet compliance standards, with more than $36 million in overpayments projected by the audit contractor. These projected costs were based on a small sample, so there may be a significantly less. Although provider-specific audit information was not shared with the LFC, HSD did reveal non-compliance issues relating to consumer safety and unusual compensation and benefits for key stakeholders and enterprise structures allowing financial gain for provider leadership.

Ms. Galbraith stated the HSD inspector general had not been involved in any fraud and abuse monitoring, a responsibility of that office. Again, during this audit process, it does not appear as if the inspector general took any action to verify OptumHealth's suspicious billing allegations or to validate the Public consulting Group audit results prior to referral to the Attorney General.

Ms. Galbraith stated after the completion of the audit, HSD made the decision that credible allegations of fraud could be made against 15 providers. On June 24, 2013, all 15 providers' funding was halted through "pay holds" The only action available to providers was to file for a "good clause exception," impossible to defend without access to the suspected violations. HSD accepted good cause exceptions in whole or part from Presbyterian Medical Services (PMS) for non-behavioral health services, Easter Seals El Mirador for non-behavioral health services, and Service Organization for Youth in full. The same requests from all other providers were denied by HSD. Ms. Galbraith referred the committee to a chart detailing the New Mexico provider pay holds as of November 16, 2013.

Ms. Galbraith said states have the flexibility to determine what constitutes a "credible allegation of fraud" according to that state's laws and procedures. New Mexico, as most states, does not have a codified procedure for determining when there is a credible allegation of fraud, when funds should be suspended, and how to afford the providers due process. Texas appears to have the most specific laws on this subject: When the responsible agency receives an allegation of Medicaid fraud, the Office of Inspector General must conduct a preliminary investigation to determine whether there is a sufficient basis to warrant a full investigation. The provider must be given (A) specific basis for the hold, including identification of the claims supporting the allegation at that point in the investigation and a representative sample of any documents that form the basis for the hold and (B) a description of administrative and judicial due process remedies, including the provider's right to seek informal resolution, a formal administrative appeal hearing, or both. Ohio's definition of credible allegations of fraud mirrors the federal regulations but Ohio has codified the appeals process for affected providers. The due process procedure is significant because it allows providers an opportunity to immediately prove that they were not in violation or, if they were in violation, that an agent or employee of the provider committed fraud, not the entity as a whole.

On October 17, PMS and Youth Development Inc. (YDI) reached a settlement with HSD. The agreements fully and finally resolve all civil and administrative matters at issue between the parties relating to billing and reimbursement for Medicaid and non-Medicaid behavioral health services. The state waived, discharged, released, indemnified, and held harmless PMS and YDI from all liability of any kind that arises and provides the same protection for HSD from PMS and YDI. The agreements included payment to HSD of $4 million from PMS and $240 thousand from YDI. However, the Attorney General stated the protection for PMS and YDI, Inc. does not extend to any criminal findings, and all 15 agencies in the referral will be investigated by his office. It is unclear whether OptumHealth will receive a percentage of the money recouped from the two providers. However, the LFC disagrees that OptumHealth should benefit from this settlement.

Ms. Galbraith discussed the status of the Attorney General investigation and State Auditor's Office (OAS) activities. The Attorney General's office is still in the investigative phase of the referral received from HSD regarding the billing practices of 15 behavioral health providers. Results will be released as individual provider investigations are completed, with the first of those reports possible by the end of 2013. Ms. Galbraith stated given HSD's significant expenditure of federal funds, independent auditors are required by federal law to test and report whether HSD has adequate procedures in place to identify fraud and safeguard federal funds. For example, federal guidelines require that HSD have methods or criteria for identifying suspected fraud cases, methods for investigating those cases, and procedures for referring suspected fraud cases to law enforcement officials. New Mexico law requires HSD to submit an annual fiscal year financial audit, which is conducted by an independent auditor, to the Office of the State Auditor (OSA). The OSA has issued the independent auditor a formal and confidential referral which directs the auditor to include certain items in its normal test work related to HSD's oversight and expenditure of Medicaid funds and compliance with its own internal policies and procedures for investigating, verifying and referring credible allegations of fraud. The referral also notifies the independent auditor that the OSA has received complaints and allegations relating to the provider audits, including the procurement process followed by HSD. The report is due to the OSA no later than December 16, 2013.

Throughout this process, several lawsuits have been filed, many of which could be unresolved for years based on the time needed for the investigation to be completed. If successful, it is unknown who would be the liable entity or what resulting costs may be. Ms. Galbraith discussed the provider pay hold status that prevented 12 agencies from continuing operations. The funds accumulated through the holds are being held by OptumHealth. Funding holds were active for all behavioral health funding streams.
Chairman Varela asked about information obtained from HSD that the State Auditor indicated had been altered by HSD. Ms. Galbraith said she believed the auditor indicated HSD removed information that PCG audit found no credible evidence of fraud or issues of consumer safety.

Representative Larranaga wanted to know why that piece was removed, Ms. Galbraith was unable to answer. Senator Papen wanted to know who authorized that deletion. Secretary Squire said the draft audit was sent over and a couple of sentences were not applicable. HSD is the only one who can say if credible allegations of fraud exist. She said other parts of the audit also have issues in them. It was an unnecessary statement, but there was nothing in the audit that was changed.

Senator Papen questioned again who authorized the deletion. Ray Mensack, HSD general counsel, said he wanted to give a timeline of the report to the committee. He claimed the department received a draft, which was reviewed by the general counsel. After several discussions, PCG agreed it was appropriate for them to remove the unnecessary statement. Later, they received a PDF of the report but it still contained that portion. HSD asked PCG to revise the report. Chairman Varela asked for proof that PCG agreed to this revision. Mr. Mensack said he could produce evidence and reiterated that no one from the department modified the report. He said PCG agreed to remove that portion then failed to do so.

Ms. Galbraith cited a section of the report that discussed the selection criteria HSD used to vet the Arizona companies. She reported when the agencies were first contacted and when they received their contract. She said the Arizona providers were expeditiously awarded emergency certifications, licensures, and designations by DOH, CYFD, a national multisystemic therapy accreditation agency, and the Board of Pharmacy. But the department has been clear that the designations were on a short string and they must have had all their supporting documents for longer designations by end of this month. Ms. Galbraith reported payment to these providers is subject to the availability of funds; this is an issue HSD is presently facing. She talked about how much contractual funding was available for Arizona providers and how much it has been expended.

Ms. Galbraith stated when they reviewed invoices, they found many with little detail. One invoice submitted paid the Arizona provider for the personnel from one the former New Mexico agencies at Arizona contractual rates. She said they followed the invoice and saw it was submitted to the Inspector General's office and approved, which resulted in a significant overpayment to that Arizona agency.

Ms. Galbraith summarized some of the expenses, which included paying for staff, treatment foster parents, behavioral health shelter care, leases of former providers or investment groups, and foundation organizations. Financial independence, through service billings, for the Arizona providers has been delayed by the need to adjust claims processing systems and to train staff transitioned from the New Mexico providers. Clinical documentation was found to not meet the requirements for legitimate billing. As of October 2013, only Valle del Sol and Agave have been paid claims in the OptumHealth system. Allowing invoice billing for professional services and other expenses, as opposed to funding through claims submission has eliminated the opportunity for HSD to determine if the volume and services for consumers are appropriate and prevents HSD from ensuring sound rates for MCOs and providers. Ms. Galbraith said unanticipated delays in claim reimbursements are financially stressing each of the new providers. Each provider had exhausted available funding as of November 22, 2013. HSD has directed OptumHealth to continue appropriate payments to the new providers using the settlement collections from PMS and YDI.

Ms. Galbraith agreed service disruptions occur with any transitions; however, they may not have occurred if HSD had chosen less drastic actions at an earlier time to address issues they were finding. The transition has been difficult for old and new providers, but mostly the consumer. However, identifying if transition disruptions occurred were difficult because the LFC didn't have access to pre or post staffing, the types of licenses individuals possessed pre- or post-transition, claims data was received a week before it was due. When the audit team was able to look at data there were huge variations between the original date of 2011/2012 and 2012/2013 and, consequently, could not be included it in the report.

Ms. Galbraith said HSD was cooperative at providing data on analysis of the crises and access line, which showed an increase in calls of 72 percent. They conducted a secret shopper result, which showed significant variation between pre- and post-transition results. There was also a report from Memorial Medical Center stating a significant increase in admissions to the psychiatric unit in October and November 2013. Ms. Galbraith explained there were personnel in new agencies that transitioned from the old agencies who contacted them and much of their information was deemed anecdotal. She said information received expressed concern that payee funds are being co-mingled with agency funds, in violation of federal internal revenue statutes. Another agency had a complaint stating payee access to their funds was delayed resulting in the inability of consumers to purchase food or pay rent. Also medication changes are being made without consent of the guardian, which is prohibited by federal and state law or regulation.

Ms. Galbraith moved to the section of OptumHealth oversight of providers**.** This review of OptumHealth's anti-fraud reports from FY11 through FY12 demonstrates knowledge of suspicious billing activity by behavioral health providers. She said suspicious activity reports were reviewed by OptumHealth. OptumHealth indicates in the report they were taking significant steps to improve fraud and abuse prevention and detection activities by upgrading position to create a position for data analyses. Their FY11 report stated they are still in the experimental stages of the program. In the meantime, this is an agency that in their RFP assured the HSD department they had a robust integrity and monitoring program and agreed in their contract that this was in place and it would continue to function.

Ms. Galbraith said OptumHealth has received over $135 million in administrative fees over the past three years but has not been able to fulfill contractual obligations. However, from the beginning of its contract until present, OptumHealth has been under eight corrective action, directed corrective action, or process improvement plans. The directed corrective action plan resulted in the placement of a contracted overseer at a cost of nearly $200 thousand to OptumHealth. The primary violations identified in the directed corrective action plan were the inability to process claims accurately and timely and a cumbersome service registration process, which impacted claims submissions. Again, data was available to OptumHealth demonstrating a need for action much earlier than FY13. As an example, OptumHealth should have been alerted of a need for deeper data analysis when the number of consumers being served decreased and costs increased. There is no documentation that this data was analyzed, although it may have demonstrated inappropriate billing or overutilization. Also, no evidence is available to show that OptumHealth interceded when the DOH surveys of core service providers found major deficiencies which were duplicated across agencies. Ms. Galbraith asked the committee to review a table containing the DOH findings between 2010 – 2013 that gives reason for OptumHealth to have a much more robust look at what was going on, to provide technical assistance, and maybe take corrective action.

Ms. Galbraith concluded with proposed changes in the statewide entity contract and the implementation of Centennial Care, the recommendations made in the 2013 program evaluation are even more relevant: complete a gaps and needs analysis, repurpose unspent state general fund dollars to programs and services which are needed and are evidence-based, and ensure functioning systems are in place to monitor the judicious use of public funding. The responsibility for closer monitoring is also increased by the addition of new providers, the lack of clarity in the roles for both the Collaborative and OptumHealth, and the reintegration of physical and behavioral health.

Charles Sallee, deputy director, LFC, explained the options that were given to the department, stating LFC staff met with HSD and gave them an option to respond to the report. He said the response will be included in the report once it is given. Diana McWilliams, acting director, Behavioral Health Services Division (BHSD), stated they do have a response but did not have enough time to submit it.

Senator Cisneros expressed concerns in what he referred to as being a “skullduggery” and being bamboozled. He referred to a case in Chama when this committee met opposition to any responses. H said there was a lack of authorization for a request that the committee made and has now heard through their testimony that the money was expended anyway and probably erroneously and perhaps illegally. Another issue he mentioned is the notion that Attorney General has not made a determination and could possibly exonerate some of these individuals in the audit. Meanwhile the government is subject to the liability. He wondered how they were going to deal with the issue to compensate, and now there seems to be a need for a mechanism of accountability. He suggested the need for a subpoena to get OptumHealth to the hearings.

Senator Smith asked what was purchased with the $17 million budget adjustment request. Ms. McWilliams stated it was spent to keep things running smoothly in the transition, with $8.7 million spent on payroll and professional services. Senator Smith asked if one of the providers might withdraw. Ms. McWilliams explained HSD is working closely with all of them and each were committed and were submitting reports. Ms. McWilliams conceded they were having trouble with the Carlsbad site. She said it was a hard transition but they were still working with all five of them.

Senator Munoz asked if all the five companies were filing claims. Brent Earnest stated one of the issues was only 10 percent of the claims were valid. He went on to say as the agencies could not submit claims because of insufficient documentation. Senator Munoz wanted to know when the checks were written to them how many people had been served. Mr. Earnest said it was at various dates and they later submitted their invoices. Ms. McWilliams clarified checks were initially cut to make sure they cover payroll about a week before they took over. It concerned Senator Munoz that the companies were paid before they offered any services and could have walked away. Ms. McWilliams said they had to first submit a payroll verification, staff roster, invoices for leasing, etc. before they were paid. Senator Munoz asked about executives implicated in the audit. Ms. McWilliams explained that they first looked at the rosters from the audited payroll before the new agencies took over, they made sure the executives were no longer on the payroll first. However, they made sure that services were still provided.

Senator Munoz suggested the idea to raise the subpoena power and quit playing games. He asked if someone out there had a copy of the audit and if there was a leak. Secretary Squire said that everything that has been in the newspaper was public information. Senator Munoz wanted to know where they were at with the sole community provider issue. Mr. Earnest said they are facilitating continued support for payment to hospitals, until the funds go away at the end of the year. Senator Munoz stated many do not HSD and hospitals are leery about giving up the tax increment and trusting they will get something in return.

Representative Larranaga asked if the first contract was Thanksgiving 2012 or May 2013. Ms. Galbraith said they received the dates directly from the providers. Representative Larrañaga asked about the $17 million budget adjustment and why it was needed if the department is paying the new companies coming in the same way they were paying the old companies. Mr. Earnest explained that it wasn’t new money, it was just moved into a different category. Representative Larranaga agreed with Senator Cisneros that it was underhanded.

Senator Morales said HSD set up an unfair advantage and asked how they are ensuring services are being provided. Ms. McWilliams said they have contracts right now and they are held to the same standards as all providers are. Senator Morales asked if there was a timeline when they process their submittals. Ms. McWilliams said they have to have timely filing across the board. Senator Morales said there was no urgency because they were given money initially and it is too late to submit these claims and monitor if many of those services were even rendered. Ms. McWilliams stated they have to submit them to receive funding and they will be reconciling dollars. Senator Morales asked if there was a clause of due process for the Arizona companies. Ms. McWilliams said there were no due process offered to the Arizona companies. Mr. Earnest said there are different clauses because old language it is not applicable to the new providers.

Senator Morales said the PCG audit showed no credible allegations of fraud and wanted to know why HSD paid PCG $3 million of tax payer money when it was at their discretion anyway. Ms. McWilliams responded for the most part they wanted to make sure. She said they knew this would happen and HSD knew the Committee would want it validated, so they took a step beyond to look at claims and longitudinal information. She said there was $36 million that was not billed correctly and this was an egregious error they had to correct.

Senator Papen discussed HSD's budget repurposing dollars and if there is a need for a statewide entity. Ms. McWilliams said she would not call it a statewide entity. Of the non-Medicaid dollars out there, federal funds are 20 percent of total funding and 80 percent of the work. It is labor intensive, monitoring, reporting, data keeping. Senator Papen wanted to know if that was the job OptumHealth was supposed to be doing. Ms. McWilliams said it is part of the collaborative's contract with OptumHealth. Senator Papen asked if OptumHealth will receive any of the recovered funds. Ms. McWilliams said no.

Senator Papen asked about HSD's request for an increase for a contractor in technology and asked if they paid OptumHealth for that. Ms. McWilliams said OptumHealth takes care of the documentation side to make sure it is happening. It is not as simple as submitting a bill; it is rather a question of whether it is submitted properly. Senator Papen said OptumHealth did not have the sole obligation for tech support. Mr. Earnest responded this is in the FY15 budget and the state has a bigger role now with technical support. Senator Papen asked how they intend to fund the Arizona providers if they cannot process claims and what would happen if the settlement money ran out. Ms. McWilliams said they are expecting them to bill and they are billing now. Senator Papen asked if a particular Arizona CEO had already left or is leaving. Secretary Squire said one person did leave and did so for a high paying job. Senator Papen concluded stating New Mexico is reportedly the worst in mental health care in the US. She said it was not like this before and believes what happened had to do with non-transparency. She went on to say people are not receiving services and this program has been turned upside-down expressing hope that it rights itself.

Representative Varela asked HSD to provide a list of the funded and unfunded positions. He asked HSD to delete unfunded vacancies which would give the department flexibility. He also requested a budget projection through the end of the fiscal year.

Recommendations of Interim Committees. Representative Roger Madalena discussed a review of behavior health providers and the effects of the removal of the New Mexico providers from HSD and the subsequent suspension of Medicaid payments. He said they then urged federal officials to remediate any harm that the transition may have caused to the infrastructure. The committee also reviewed numerous matters related to health and human services. He said they reviewed how HSD worked the Medicaid expansion regardless of status. The committee reviewed HSD plans to implement Centennial Care to cut seven providers to just four. He said the subcommittee for disability reviewed the concerns of DOH and HSD and interviewed people as to their increase of their waiting list. They also looked at the status of the Jackson lawsuit and heard testimony about the exchange. Representative Madalena said they will be ready to submit their evaluation on December 19 and 20.

Senator Cisco McSorley, co-chair, tobacco settlement, stated three major problems occurred. First, in last year budget the state used tobacco money for reserves, but there was a decision that they were going to cut the money because they did not go after the smaller funds. At the time they all agreed that it would be a $100 thousand dollars but now the state is being charged a $12 million fine. Fortunately, the Attorney General has appealed the case. He said these decisions were made after the fact because nine years ago they had no idea what the terms were. We collected 81 percent of the funds. Senator McSorley said there are two different funds: the tobacco permanent fund of $180 million and the tobacco program fund, which goes to Medicaid and cancer research. He said if they do not receive those funds programs could suffer.

Senator McSorley said the committee endorsed one bill and that was to make it illegal for someone under 18 to buy an *e-cigarette*. He said it is a gateway to cigarettes and is illegal in other states. The third problem is the tobacco money is used for tuition of lottery scholarship. He said tobacco cessation programs are working and the Legislature should keep these programs. He said DOH is discussing decreasing tobacco cessation programs by half. He suggested the committee increase that funding.

Senator Cisneros, transportation infrastructure revenue committee, stated the committee will be facing liability for highway maintenance and repair which is close to $1 billion in the future. He said they do not have a viable revenue stream to support this, stating they are losing federal dollars and the tax base has not been increased. Representative Larrañaga reiterated the committee will need to analyze the infrastructure budget. Representative Sandoval suggested a need for a short term solution as well as a long term.

Thursday, December 12, 2013

The following members and designees were present on Thursday, December 12, 2013: Chairman Luciano “Lucky” Varela; Vice Chairman John Arthur Smith; Representatives Henry “Kiki” Saavedra, Larry A. Larrañaga, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, and William “Bill” J. Gray; and Senators Carlos R. Cisneros, Sue Wilson Beffort, Mary Kay Papen, George K. Muñoz, Carroll H. Leavell, Steven Neville, and Pete Campos. Guest Legislators: Representatives Paul C. Bandy, Jimmie C. Hall, Patricia A. Lundstrom, Vickie Perea, Rodolpho “Rudy” S. Martinez, and Jim R. Trujillo. Senators Sander Rue, Clemente Sanchez.

Public School Support (993). Hanna Skandera, secretary-designate, Public Education Department (PED), presented the department’s FY15 public school support request. PED requested a $140 million increase in education funding for FY15: $99 million to fund new recurring expenses -- $45 million for program costs and $55 million for related recurring costs. PED requested $29 million in nonrecurring expenses, $3.3 million for supplemental appropriations, and approximately $10 million in capital funds for new buses and prekindergarten.

Secretary Skandera noted 4 percent of the request was for below-the-line funding to support the department’s focus on accountability. PED’s primary goals include closing the achievement gap, maximizing the state’s return on investment in education, directing funding to proven programs, ensuring the most effective teachers and administrators are rewarded, providing resources to schools most in need and to sustain improvements, and expanding the number of students in prekindergarten and Kindergarten Three Plus (K-3 Plus).

Secretary Skandera detailed some specifics of the request, including seeking funding for a 10 percent increase in level one teacher salaries from a base of $30 thousand to $33 thousand to improve recruitment and retention of teachers. This is projected to impact 2,000 teachers based on current salaries and results in an increase of $6.5 million in above-the-line funding. PED requested $9.4 million for insurance costs, reflecting a 4.1 percent increase for health insurance premiums and a 2.3 percent increase for unemployment and insurance costs tied to the consumer price index. PED requested $5.2 million in fixed costs for school districts and charter schools, $2.5 million of which is related to external audits, maintenance and repair, and materials and supplies. The request also includes $3.3 million for energy, water, and utility costs, and $1.8 million for Indian education. PED recommended an increase to $1 million in dual credit instructional materials to support increased participation. Due to the new content standards, PED suggested increasing funding for instructional materials to $30 million.

Secretary Skandera discussed and compared above-the-line and below-the-line funding. PED requested $15.5 million in funding for the Reads to Lead program, moving $4 million previously included in formula funding below the line. PED requested a $3 million increase in prekindergarten funding to be matched by an increase in funding received by the Children, Youth and Families Department. All school districts that requested prekindergarten funding received it, about 600 students in those districts were not able to participate. Secretary Skandera recommended moving $309 thousand funding for college and career readiness assessments for 10th grade students from above-the-line to below-the-line. The request included $500,000 in workforce readiness funding to better prepare students choosing to not attend college. An additional $500 thousand was requested for both dropout prevention and early college high school programs.

PED requested $9 million for struggling schools, which would help offset $3 million of federal School Improvement Grant funding lost due to the federal sequester. PED proposes to make the funding available to C schools rather than just D and F schools as well as fund a training program modeled on the University of Virginia’s School Turnaround Specialist Program (UVA-STSP). This allocation also includes $2 million to allow some districts to participate in the UVA-STSP. Secretary Skandera then discussed PED’s recommended salary increase for level one teachers and a request for $12 million to fund a pilot program to encourage districts to explore and develop plans that tie teacher and school leader salary increases to effectiveness.

Next, PED requested $2 million for statewide short-cycle assessments for fourth through tenth grade students. This amount was appropriated last year and 81 of 89 school districts participated. PED requested an additional $2 million for math short-cycle assessments for kindergarten through third grade students.

Secretary Skandera then discussed a $6 million request for continued implementation of the new teacher and school leader evaluation system that would pay for continued training especially for administrators, make end of course exams available online, and fund software to allow districts to track their teachers with online personnel files. Similarly, a request of $1.5 million would fund a “parent portal” to allow parents to track student success and progress.

Secretary Skandera discussed the need to fund the transition to the new common core standards, a $5 million request for internet bandwidth improvements for transitioning to online assessments, $7 million in emergency support for districts experiencing shortfalls, and funding for special education maintenance of effort to be prepared for any outcome from an upcoming hearing with the federal Department of Education. Supplemental requests included $1.7 million for increased emergency supplemental funding in FY14 for budget shortfalls of small school districts and $1.6 million for more support and training for teachers and administrators regarding end of course exams and resources including the transition to online platforms.

Representative Salazar was concerned about ensuring teachers and students have enough books and materials. He asked why some Espanola students are missing books halfway through the school year. Secretary Skandera noted the department requested a $10 million increase in funding for instructional materials, and PED would identify which books Espanola students are missing and work to address the shortage.

Senator Cisneros asked why the 10 percent increase in base teacher pay is qualified by the phrase “at least” in the department’s request. Secretary Skandera responded 10 percent is the maximum because some districts pay starting teachers more than others and some are already paid more than 10 percent higher than the statewide minimum. Senator Cisneros was concerned such raises may make it harder for rural poor performing districts, which may be paying teachers more than $33,000, to attract and retain teachers if competing districts raise their starting salaries with new funding. Senator Cisneros encouraged the department to do what it can to push school districts to transition to natural gas buses. He also asked what the department or school districts did to promote workforce readiness by partnering with local business. Secretary Skandera responded the grants for workforce readiness and for early college high school are conditioned on partnerships with local business. Senator Cisneros then discussed the merit pay issue, and asked how the department planned to deal with “bad” teachers. Secretary Skandera answered last year, 99.9 percent of teachers were deemed “competent” which she argued is not sufficiently informative. Skandera stated the department’s new system has more tiers on which to classify teachers, will help to identify and provide training to struggling teachers, and entitles teachers to feedback from evaluations within 10 days allowing changes to be made before the school year ends.

Senator Muñoz expressed his concerns that principals would have too much discretion in rewarding the teachers they approve of and the possibility for administrators to use the evaluation process to favor certain teachers over others regardless of their classroom performance. Secretary Skandera acknowledged the legitimacy of concerns regarding the subjectivity of the evaluation process, but emphasized it is not new and objective data will now be used to supplement evaluations. Senator Muñoz then asked where the department was on funding Teach for America (TFA). Secretary Skandera explained the funding was not specifically for TFA and was thus made available through a request for proposal (RFP). She said an organization that partnered with TFA was initially awarded this funding but was unable to demonstrate it could fulfill the deliverables so the department has restarted the process. Senator

Muñoz then asked for enrollment data and reimbursements to districts receiving funding intended for struggling schools, e.g. teacher training, due to his concern that some funding is going to schools with grades higher than D or F.

Representative Larrañaga asked why the department's proposals are the best way to fund public education and ensure the desired effect. Secretary Skandera argued that when the funding was placed below the line for the reading initiative in the last year it was more effective than if included as formula funding. Representative Larrañaga then asked what the department would do, beyond creating the parent portal, to encourage parental involvement. Secretary Skandera discussed the Readers Raise the Roof program where parents are offered bilingual presentations for three hours to encourage reading at home.

Representative Tripp asked about the distribution of below-the-line funding. Secretary Skandera stated the department emphasizes accountability and planning by districts. Representative Tripp asked what proportion of department spending plans are rejected, to which Secretary Skandera responded there are only a few instances where funding is so limited plans must be rejected. She stated it is more common that PED works with school districts to improve plans that are initially deemed insufficient and used the early reading initiative as an example.

Senator Clemente Sanchez pointed out teachers' salaries are for nine months of work, and the $30,000 starting rate is equivalent to a $44,000 annual salary. He emphasized it is a teacher's decision to work for the three months when school is not in session. Senator C. Sanchez stated while improving education is a priority, funding must be wisely spent. Further, he noted his disappointment that there is not more focus on the social conditions afflicting New Mexico's students. Representative Jim R. Trujillo echoed Senator Sanchez's concern about the need to focus more on the state's social conditions crisis. Secretary Skandera noted the governor has invested in the Breakfast before the Bell program and has semi-regular meetings with other agencies to coordinate services but also mentioned poverty should not serve as an excuse why the state's education issues cannot be fixed.

Representative Lundstrom asked why the supplemental request for maintenance-of-effort funding for special education was nonrecurring, to which Secretary Skandera responded the nonrecurring nature of the request was due to the uncertainty of the outcome of an upcoming hearing with the federal Department of Education.

Representative White noted the K-3 Plus and prekindergarten are successful programs and asked whether the requested increases are adequate to meet demand. Secretary Skandera responded there were 600 students unable to participate in the prekindergarten this year, and the requested increases should cover those students and an additional 500 students.

Chairman Varela asked about enrollment, which grew by 2,922 units overall, and which districts were seeing decreased enrollment. Secretary Skandera responded the department could provide information in time, but the general trend is a migration out of rural communities. Chairman Varela then asked for a comparison of requested increases in above-the-line funding and below-the-line funding. Secretary Skandera answered PED requested a 1.9 percent increase in above the line funding and an 80 percent increase in below the line funding. Finally, Chairman Varela asked for an explanation of dual-credit courses and related funding. Secretary Skandera responded while the Higher Education Department reimburses the cost of dual-credit courses taken, PED covers the cost of materials and requested a $112,000 increase to fund this expense.

Department of Transportation (805). Secretary Tom Church presented the budget request, which was for $833M, a decrease of 4 percent from FY14. The request included a decrease of $8.1 million for the Programs and Infrastructure Program, a $23.8 million decrease to the Highway Operations Program, and a $.3 million increase to Business Support. Major differences between FY14 and the department's FY15 request included the elimination of the unobligated State Road Fund balances used in FY14 totaling $34.4 million and a program change to move the Local Government Road Fund, totaling $22.3 million, from Highway Operations to Programs and Infrastructure.

Senator Beffort asked Secretary Church and Chief Economist Clint Turner to detail the decreased revenue from trucking taxes. Mr. Turner acknowledged that if ports are closed and FTE are down, then the decrease in revenue is expected. Senator Beffort emphasized that this needs the department's attention.

Senator Cisneros noted the need to identify a new source of long-term revenue to fund future road projects and asked why the governor vetoed language to pay for signage for the Ben Lujan Memorial Highway that was recognized by legislative memorial. Secretary Church explained the department felt it could fund the signage with its operating budget but also that the Transportation Commission, not the Legislature, has highway naming authority.

Senator Smith asked about the reasoning behind the Transportation Commission's resolution to issue $50 million to 80 million in bonds, expressing his concern that this is an example of seeking instant gratification in exchange for long-term pain. Secretary Church explained that the expanded bonded capacity is a short-term fix. Further, Senator Smith noted that both the executive and the Legislature need to step up to address the quality of highways and bridges, regardless of potential public disapproval of such spending. Next, Senator Smith and Secretary Church discussed the state of the department's equipment. Secretary Church explained that a decreased equipment budget for the past six or seven years had made it difficult for the department to keep roads open and clear. Senator Smith then asked about the status of a proposal for underground power transmission lines, Secretary Church responded that NMDOT does not have authority to charge a utility for right of way use. Currently, the department permits utilities' use of rights-of-way, but the utility is responsible for any necessary removal if road maintenance so requires. Senator Smith expressed his feeling that utilities should be paying fair market value for this use, and his hope that changes could be made to allow the department to tap this revenue source. He asked Secretary Church to look toward whether or not other states allow utilities free use of rights of way.

Representative Larranaga asked why revenue from special fuels taxes are down, and Secretary Church noted that trucking is likely down due to economic circumstances, thus driving down such revenue. Mr. Turner explained that special fuels tax revenue did grow in FY13 albeit slightly, and this has been the case since FY10. However, miles traveled have decreased and the growth in special fuels tax revenue is growing slower than it had before the recession. Next, Representative Larranaga echoed Senator Smith's concern that the department is not sufficiently addressing its debt.

Representative Tripp inquired as to the status of the department's cooperative project with the federal government to repair the road to Mogollon, to which Secretary Church responded that the project costs would be fully reimbursed. Representative Tripp then asked how much the Rail Runner loses annually, but Secretary Church stated that MRCOG operates the train.

Representative Salazar asked about the highway to Velarde, the department responded that that project is scheduled for 2015.

Senator Muñoz asked whether there was sufficient funding for the Highway 491 project, and Secretary Church responded that there are four segments of the project that are currently unfunded. These segments are between Shiprock and To'hajiilee, from mile-marker 20 to 37.

General Services Department (350). Ed Burckle, secretary, General Services Department (GSD), presented the department's FY15 budget consisting of three components: $40.6 million for programs, $99.3 million for risk funds and $375 million for health benefits for a total FY15 request of $515.3 million. Mr. Burckle detailed each of the departments division needs and gave background on the $12.5 million or 5.7 percent increase in general funds to the facilities management division (FMD).

Mr. Burckle reviewed the State Purchasing Division (SPD) budget, stating the general fund request is flat with increases in risk and health premiums offset by reductions. He said the increase in fees fund of $145 thousand in the 200 category also fund reorganization, which supports enhanced procurement practices and outcomes by realigning positions in three bureaus and supports implementation of 2013 procurement legislation and governors procurement reform tax force. He outlined objectives of SPD, including the development of automated systems for procurement, greater oversight and transparency of procurements, improved competencies for chief procurement officials and ensuring sound spending practices across state government.

Mr. Burckle reviewed the Transportation Services Aviation Division (TSD) asking the Legislature to fund $643.5 thousand of the aviation budget out of general funds and $135 thousand out of enterprise funds. He highlighted the need to get away from measuring the cost per flight hour and move toward the total cost of running aviation for the state. He discussed the department's desire to concentrate on conducting more flights for sick children; he said they fly approximately 50 missions per year for the children medical services and would like to expand state operations to flying blind and hearing impaired children. Next Mr. Burckle reviewed the motor pool, stating the fleet has been reduced by 174 vehicles and is down to 1,981. He said 52 percent of the total vehicles in the fleet have either more than 100 thousand miles or the vehicle is older than 5 years of age, the department is asking for an increase of $1 million to purchase 100 new vehicles.

Mr. Burckle discussed the Risk Management Division (RMD) operating budget request of $8.5 million, highlighting the division's success of reorganizing the division with the reduction of the number of people working in benefits. The division director shifted resources to the workers compensation bureau and eliminated 16 temporary employees offsetting approximately $500 thousand. In conclusion Mr. Burckle outlined GSD challenges, which include filling funded vacant positions with qualified personnel; training and retaining personnel for optimal workforce and operations, rebuilding risk fund reserves through managed rate structures and loss control efforts, rebuilding group benefits reserves while providing quality affordable health benefits, reducing the "footprint" of state government thru better utilization of office space, and funding information technology staffing for efficiency gains and improved tracking/reporting on key GSD activities.

Chairman Varela asked about funded and unfunded vacant positions. Mr. Burckle stated there are 82 vacant positions, 48 of which are funded and 41 are un-funded. Chairman Varela asked how many un-funded positions should be deleted. Mr. Burckle said they are recommending 20 un-funded positions be eliminated, leaving the remaining 21 to rebuild the facilities management division where the majority of vacancies are.

Status Report on Implementation of NEOGOV Charles Sallee, deputy director, LFC briefed the committee on an information technology review that staff is conducting of the State Personnel Office's (SPO) human resource system called NEOGOV. The objective of the evaluation is to assess the functionality and the impact on hiring. LFC staff sent out an engagement letter in October and has made preliminary information requests. An entrance conference was held in December and staff is currently working with SPO to schedule site visits and conduct staff interviews. Staff expects to complete field work and issue a final report after the 2014 legislative session. Mr. Sallee said NEOGOV is an online human resource application where people apply for jobs online. It also helps SPO meet its statutory requirements of screening qualifications as well as some of the testing required for some positions.

Chairman Varela asked if the system serves all classified positions. Eugene Moser, director, State Personnel Office (SPO), said the system provides a data base where applicants can submit an application and apply for multiple jobs without having to fill out a tremendous amount of paperwork. They system also gives SPO the ability to assess applicant qualifications. Chairman Varela asked if the system will produce a "tool" report on all positions in the state. Mr. Moser said the system gives SPO the ability to take information from the application and transfer it into SHARE without having to be re-keyed again. This saves a tremendous amount of time on processing new hires and also makes sure the data is free of errors. Chairman Varela asked that the evaluation analyze the flow of data from SPO to the hiring agency as well as a timeline from beginning to end. Mr. Sallee said the application has 90 standardized type reports and LFC will analyze them as well as any interfaces that may or may not exist for information transfer.

Executive Compensation Report. Eugene Moser, director, State Personnel Office (SPO), provided highlights of the 2013 Classified Service Compensation Report. Objectives of the report are to identify key compensation issues facing executive agencies in state government, evaluate the current situation of the classified service system, identify the total compensation mix and evaluate how we got where we are today.

Mr. Moser discussed key issues highlighting the need for reform. There has been relatively no maintenance of pay structure in the past decade, which exacerbates the problem. He stated the need to move away from a "one size fits all" approach to salary increases that have contributed to and will continue current pay challenges. Mr. Moser discussed job classifications and how they do not match job requirements. He said positions are not being properly classified, which impacts the ability to recruit and retain qualified employees. He said the cost of turnover, driven by uncompetitive salaries, is estimated at $126 million in FY13. He said SPO has conducted 127 classification studies impacting 1,008 employees and their position levels in FY13 to examine qualifications for specific jobs.

Mr. Moser said the salary structure was adjusted 1.75 percent in FY05 and was adjusted again 1 percent in FY14. The structure lags eight-state market by 18 percent, with lower pay bands lagging the market by more than 23 percent and some benchmark classifications lagging as much as 40 percent. He said the state salary structure is too wide, with a 78 percent spread from minimum to maximum. Since calendar year 2001, both private and public sector organizations have adjusted salary structures on average 23 percent with the state of New Mexico only adjusting its salary structure by 10.7 percent with most adjustment occurring prior to FY06. As a result, agencies cannot attract and retain qualified employees. In FY13, new hires were on average at 94 percent of midpoint. That has increased to 95 percent in the first quarter of FY14. Currently almost one third or 31 percent of classification are assigned to alternative pay bands (APB) in critical occupations, such as engineering, information technology and health care. To fix this problem and reduce fiscal impact, the state should have adjusted entry levels narrowing the salary structure each year.

Mr. Moser said across-the-board pay raises will not fix the system. A targeted approach to structure adjustment is required to ensure the salary structure is representative of the current labor market. He suggested targeting critical areas in health care, public safety, security, and welfare to make positive improvements initially. He said other states have offered cost-of-living adjustments based on a matrix and also given merit increases. He suggested the need for a commitment from the executive and the Legislature to complete the process over a two or three year period of time.

Mr. Moser discussed annual leave, sick leave and overtime, stating 1.9 million hours of annual leave used in FY13 cost the state of $39.3 million. He said employees cashed out more than 38 thousand hours of sick leave at a cost of almost $1 million with 1.6 million overtime hours worked by classified employees at a cost of $36.7 million in FY13. Next Mr. Moser discussed recruitment and separations. He said SPO hired 3,090 new employees in FY13, an increase of 156 percent over FY11. The 2,962 separations in FY13 a 37 percent increase over FY11. SPO received more than 206 thousand applications in FY13, an increase of 65 percent over FY11.

AFSCME Lawsuit. Patrick Gutierrez, president of Council 18, American Federation of State, County and Municipal Employees (AFSCME), stated thousands of state employees and union members have been waiting to receive back pay. He said Mr. Moser instructed human resource departments not to allow state employees to attend the AFSCME hearing. Mr. Gutierrez said it is a clear attack on public employees and the idea of open government. He said in May the Supreme Court ruled in 2008 State Personnel Board, acting on behalf of the executive branch, breached the state's contractual obligations and acted contrary to legislative appropriation and to the act. The rulings of both the district court and the Court of Appeals correctly enforced the rights of those state employs covered by the contract accordingly. Those rulings are hereby affirmed and these cases remanded for further action consistent with the order. Mr. Gutierrez said District Judge Alan Malott ruled the state of New Mexico owed AFSCME and CWA $87.5 thousand in legal fees. He said it is his belief the state has the funds to pay the settlement with vacancy rate savings.

Chairman Varela and Mr. Moser had a discussion about a compensation study intended to make the state more competitive in the market. Mr. Moser stated the Hay Group recommendations were not followed as they should have been. Chairman Varela expressed concern with the percentage of employee contributions deducted from the base salary. He asked Mr. Moser to provide an exact percentage of employee contributions. Mr. Moser said the department would provide that information to the committee. In response to Chairman Varela, Mr. Moser discussed the role and duties of the State Personnel Board. Mr. Moser said the governor would have a recommendation to fix the system before the legislative session. He said the governor is concerned that the pay system be equitable, work properly, and support the reform of the classification system. Chairman Varela expressed his hope to develop a long-term solution to the pay structure and suggested a commitment be made with the executive to resolve the problem.

Representative White asked if it was within Mr. Moser's authority to reclassify or make classification changes or if it requires direction from the Legislature. Mr. Moser said SPO has made some adjustments but it is contingent upon the availability of funding. He said if SPO made all changes immediately, it would cost approximately $90 million in total immediate impact. Representative White pointed out redefining jobs and making some changes does not necessarily mean an increase in pay. Mr. Moser said it could cause a larger problem with new hires at a higher salary than long-time veterans. Representative White asked what the correct balance should be in terms of total compensation. Mr. Moser said it should be closer to 65 percent salary and 35 percent benefits. He said the total compensation is very benefit lucrative and was a solution to a problem when the state did not have funding to raise base salaries.

Senator Cisneros asked what it would take to get to the market level. Justin Najaka, compensation and classification director, SPO, said approximately 18 percent. He said the state would not have an issue with compensation had it adjusted the structure and provided increases averaging 3 percent per year for the last six. Providing all the changes all at once would cost approximately $90 million. Senator Cisneros asked for clarification and details of the AFSCME lawsuit. Mr. Moser said there are several significant issues and the problem is far from simplistic. He said there was sufficient funding in the General Appropriation Act to cover the funding for the lawsuit; however, the executive chose not to go down that path. He said it does not cover all employees in the bargaining unit, only those employed then. He went on to discuss the complications in calculating what each employee is entitled to and said SPO will meet in coming weeks to discuss methodology and start to resolve the situation. Senator Cisneros asked what the total amount will be and if funds come out of reserves or if an appropriation is required. David Abbey, director, LFC, said LFC presented a report in which it was estimated the cost to be approximately $22 million. LFC staff believes agencies have latitude to cover those retroactive costs within appropriations. Mr. Moser said the figure SPO has estimated is closer to $25 million or $28 million.

Chairman Varela asked what the status is of the collective bargaining agreements. Mr. Moser said they are in negotiations. Chairman Varela expressed his hope for a resolution and suggested fair share not be in collective bargaining agreement. He said some employees have complained about pay and not being well represented by the union and hoped non-union employees are not asked to pay their fair share. Chairman Varela gave a history of the issue, stating Governor Richardson requested from the Legislature an amount to pay the union. The funds were appropriated and subsequently he applied the funds to all employees, which caused the shortage to pay the union and prompted the lawsuit.

Friday, December 13, 2013

The following members and designees were present on Friday, December 13, 2013: Chairman Luciano "Lucky" Varela; Vice Chairman John Arthur Smith; Representatives Henry "Kiki" Saavedra, Larry A. Larrañaga, Don L. Tripp, Edward C. Sandoval, Nick L. Salazar, James P. White, and William "Bill" J. Gray; and Senators Carlos R. Cisneros, William F. Burt, Mary Kay Papen, George K. Muñoz, Carroll H. Leavell, Steven Neville, and Pete Campos. Guest Legislators: Representatives Paul C. Bandy, Jimmie C. Hall, Rodolpho "Rudy" S. Martinez, and Jim R. Trujillo. Senators Sander Rue, Clemente Sanchez.

Capital Outlay. Linda Kehoe, principal analyst, and Sonya Snyder, fiscal analyst, LFC, presented the committee with an overview of the capacity available for capital expenditures in 2014 and an overview of the 2014 capital requests from state agencies, special schools, senior citizen centers, libraries, and higher education and tribal institutions. Ms. Kehoe said LFC staff develops the framework for proposed capital funding to serve only as the foundation for consideration and action by the full Legislature. Staff develops the framework based on criteria approved by the committee, site visits, review of infrastructure capital improvement plans, monthly meetings with major departments, and testimony presented at hearings held in the interim. She said LFC made site visits in the last six months to view both completed and construction projects in progress.

Ms. Kehoe said the preliminary funding proposals will be made public in early January when the "draft" bill is pre-filed if so directed by the committee. State agencies and special schools requested $364.2 million; the framework proposes expenditures totaling $178.7 million from both severance tax bond capacity and other state funds. The proposed funding considers the agency's priorities and the most critical projects impacting public health and safety, the preservation of state facilities, economic development and projects requiring additional funds for completion. Ms. Kehoe detailed capital requests and noted the amount requested for 2014 GOB funding is $310 million. The staff framework and proposed funding for senior citizen centers, libraries, special schools, and state and tribal higher education facilities is within the $167 million capacity to avoid an increase in property taxes.

Ms. Kehoe pointed out the Higher Education Department capital outlay review committee and the staff's framework demonstrates very little difference in the funding recommendations. The three largest projects totaling $54.7 million, or more than one-third of GOB capacity, is recommended for the three research institutions. Most of the institutions except the research schools are providing match funds for their projects. The staff framework encourages the research institutions to use their own funds for plan and design so the projects will be shovel ready soon after voters approve the bonds and the bonds are issued. She said ENMU is contributing $4 million for the first phase of a $26 million project, the Health Sciences Center is contributing $6 million toward their project, Central New Mexico Community College is contributing $14 million toward their $24 million project, and at least eight of the two-year and branch colleges are providing matching funds for their projects. She also pointed out tribal schools all have commitments from federal grants or money on hand for capital projects.

Ms. Kehoe said if policymakers decide to fund local projects, LFC staff does have a "draft" copy of the top five priorities based on infrastructure capital improvement plans submitted to the DFA Local Government Division. The participation by eligible political subdivisions is not statutorily required, but more than 95 percent of local entities participate in the planning process for capital needs.

Senator Cisneros made a motion to adopt the staff recommendation on the framework and directed a bill be drafted for introduction in both the Senate and the House, he stated he would sponsor the Senate bill and Representative Jim Trujillo would sponsor the House bill, seconded by Senator Campos. The motion carried.

Chairman Varela asked when severance tax bond funds would be available. Ms. Kehoe said assuming that it passes with the emergency clause, agencies are able to start processing construction documents and RFP's in March but bonds will not be issued until June 2014. Chairman Varela asked about GO bond funds. Ms. Kehoe said GO bonds are voted on in November 2014 and the bonds are sold in the spring of 2015. Chairman Varela asked for the status of prior appropriations, he expressed concern in moving funds forward and getting projects "shovel ready". Ms. Kehoe said LFC does provide quarterly reports and work monthly with all major departments to try to help with bottlenecks, our next update will be ready by the session.

Staff Report. Jeannae Leger, administrative services manager for LFC, presented the budget request for the legislative branch. The overall request is a 5.6 percent increase over FY14. Budgets for the legislative branch are included in the feed bill (House Bill 1), with the exception of legislative building services and Energy Council dues included in the General Appropriations Act.

Representative Tripp asked if the request for the legislative information systems (LIS) included funding to evaluate a paperless system for use during the legislative session. Ms. Leger informed the committee the LIS request only included funding for network maintenance, program licenses, and replacement equipment for staff and legislators.

Representative Sandoval asked if the budget request for the legislative branch included dues for organizations such as National Council of State Legislatures. Ms. Leger informed the committee the dues were included in the budget recommendation for the Department of Finance and Administration (DFA). Ms. Christine Boerner, LFC analyst for DFA, confirmed.

Final Review. Director Abbey presented to the committee a packet of spreadsheets summarizing the staff recommendations for FY15 appropriations for each agency, a general fund financial summary, and a spreadsheet indicating adjustments to the initial staff recommendations that were presented to the committee during the fall.

Representative Saavedra moved to adopt the staff recommendations contained in the packets, seconded by Senator Cisneros. The motion carried with Representatives Gray, Tripp, and Larranaga voting in the negative.

Senator Campos and Representative White were appointed to the technical correction subcommittee.

Members of the committee thanked committee staff for its hard work on the budget recommendation and recognized Director Abbey for his leadership.

With no further business, the meeting adjourned at 9:56 a.m.

Chairman Luciano "Lucky" Varela

Vice Chairman John Arthur Smith